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MT LEGISLATIVE HISTORY

Chapter 51 19 87

Bill (H) 310 S _____ Original bill & hist. ✓C

H. Committee on Business Labor

Hearing Date(s) JAN 29 ✓C

_____ ___C

_____ ___C

_____ ___C

Date Out JAN 29 ✓C

S. Committee on Business & ~~Labor~~ Industry

Hearing Date(s) FEB 10 ✓C

FEB 11 ✓C

_____ ___C

_____ ___C

FEB 11 ✓C

Did this bill originate in an interim committee? ___Yes ___No

Committee _____ Report _____

HOUSE BILL NO. 310

INTRODUCED BY KITSELMAN, MAZUREK

IN THE HOUSE

JANUARY 20, 1987	INTRODUCED AND REFERRED TO COMMITTEE ON BUSINESS & LABOR.
JANUARY 29, 1987	COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED.
JANUARY 30, 1987	PRINTING REPORT.
JANUARY 31, 1987	SECOND READING, DO PASS.
FEBRUARY 2, 1987	ENGROSSING REPORT.
	THIRD READING, PASSED.
	TRANSMITTED TO SENATE.

IN THE SENATE

FEBRUARY 3, 1987	INTRODUCED AND REFERRED TO COMMITTEE ON BUSINESS & INDUSTRY.
FEBRUARY 12, 1987	COMMITTEE RECOMMEND BILL BE CONCURRED IN. REPORT ADOPTED.
FEBRUARY 16, 1987	SECOND READING, CONCURRED IN.
FEBRUARY 18, 1987	THIRD READING, CONCURRED IN. AYES, 50; NOES, 0.
	RETURNED TO HOUSE.

IN THE HOUSE

FEBRUARY 19, 1987	RECEIVED FROM SENATE.
	SENT TO ENROLLING.

INTRODUCED BY House BILL NO. 310
Kilscomm T Megaard

A BILL FOR AN ACT ENTITLED: "AN ACT TO ESTABLISH A PUBLIC POLICY FOR SELECTION OF QUALIFIED APPLICANTS TO PROVIDE ARCHITECTURAL, ENGINEERING, LAND SURVEYING, AND LANDSCAPE ARCHITECTURAL SERVICES UNDER PUBLIC CONTRACT; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Statement of policy. The legislature hereby establishes a state policy that governmental agencies publicly announce requirements for architectural, engineering, land surveying, and landscape architectural services and negotiate contracts for such professional services on the basis of demonstrated competence and qualifications for the type of professional services required and at fair and reasonable prices.

Section 2. Definitions. Unless the context clearly indicates otherwise, the following definitions apply to [this act]:

(1) "Agency" means a state agency as defined in subsection (8), local agency as defined in subsection (5), or special district as defined in subsection (7).

(2) "Architectural, engineering, land surveying, and landscape architectural services" or "professional services" means services rendered by a person, other than as an employee of an agency, contracting to perform activities within the scope of the general definition of professional practice and licensed for the respective practice as an architect pursuant to Title 37, chapter 65, a landscape architect pursuant to Title 37, chapter 66, or an engineer or land surveyor pursuant to Title 37, chapter 67.

(3) "Licensed professional" or "licensed architect, professional engineer, professional land surveyor" means a person providing professional services who is not an employee of the agency for which the services are provided and who is exempt under 18-8-103.

(4) "Local agency" means a city, town, county, special district, municipal corporation, agency, port district or authority, airport authority, political subdivision of any type, or any other entity or authority of local government, in corporate form or otherwise.

(5) "Person" means an individual, organization, group, association, partnership, firm, joint venture, or corporation.

(6) "Special district" means a unit of local government, other than a city, town, or county, authorized by law to perform a single function or a limited number of functions, including but not limited to water districts,

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INTRODUCED BILL
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irrigation districts, fire districts, school districts, community college districts, hospital districts, sewer districts, and transportation districts.

(7) "State agency" means a department, agency, commission, bureau, office, or other entity or authority of state government.

Section 3. Public notice of agency requirements. Each agency shall publish in advance its requirement for professional services. The announcement must state concisely the general scope and nature of the project or work for which the services are required and the address of a representative of the agency who can provide further details. An agency may comply with this section by:

(1) publishing an announcement on each occasion when professional services provided by a licensed professional are required by the agency; or

(2) announcing generally to the public its projected requirement for any category or type of professional services.

Section 4. Procedures for selection. (1) In the procurement of architectural, engineering, land surveying, and landscape architectural services, the agency shall encourage firms engaged in the lawful practice of their profession to submit annually a statement of qualifications and performance data. The agency shall evaluate current

statements of qualifications and performance data on file with the agency, together with those that may be submitted by other firms regarding the proposed project, and conduct discussions with a minimum of three firms regarding anticipated concepts and the relative utility of alternative methods of approach for furnishing the required services.

(2) The agency shall then select, based on criteria established under agency procedures and guidelines and the law, the firm considered most qualified to provide the services required for the proposed project. The agency procedures and guidelines must be available to the public and include at a minimum the following criteria as the relate to each firm:

(a) the qualifications of professional personnel to be assigned to the project;

(b) capability to meet time and project budget requirements;

(c) location;

(d) present and projected workloads;

(e) related experience on similar projects; and

(f) recent and current work for the agency.

Section 5. Negotiation of contract for services. (1) The agency shall negotiate a contract with the most qualified firm for architectural, engineering, land surveying, or landscape architectural services at a price

which the agency determines to be fair and reasonable. In making its determination, the agency shall take into account the estimated value of the services to be rendered, as well as the scope, complexity, and professional nature thereof.

(2) If the agency is unable to negotiate a satisfactory contract with the firm selected at a price the agency determines to be fair and reasonable, negotiations with that firm must be formally terminated and the agency shall select other firms in accordance with [section 4] and continue as directed in this section until an agreement is reached or the process is terminated.

Section 6. Coordination with other statutes. (1) [This act] need not be complied with by an agency when the contracting authority makes a finding in accordance with this or any other applicable law that an emergency requires the immediate execution of the work involved. Nothing in [this act] relieves the contracting authority from complying with applicable law limiting emergency expenditures.

(2) The limitation on the preparation of working drawings contained in 18-2-111 applies to [this act].

(3) The procedure for appointment of architects and consulting engineers pursuant to 18-2-112 applies to [this act], except that agency shall select its proposed list of three architects or consulting engineers in accordance with [this act] prior to submission to the department of

administration.

(4) The exception for services estimated to cost less than $5,000 in 18-8-105 applies to [this act].

Section 7. Extension of authority. Any existing authority of the department of administration to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Section 8. Saving clause. This act does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before the effective date of this act.

Section 9. Severability. If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 10. Effective date. This act is effective on passage and approval.

-End-

APPROVED BY COMM. ON
BUSINESS AND LABOR

HOUSE BILL NO. 310

INTRODUCED BY KITSELMAN, MAZUREK

A BILL FOR AN ACT ENTITLED: "AN ACT TO ESTABLISH A PUBLIC POLICY FOR SELECTION OF QUALIFIED APPLICANTS TO PROVIDE ARCHITECTURAL, ENGINEERING, AND LAND SURVEYING~~,---AND LANDSCAPE--ARCHITECTURAL~~ SERVICES UNDER PUBLIC CONTRACT; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Statement of policy. The legislature hereby establishes a state policy that governmental agencies publicly announce requirements for architectural, engineering, AND land surveying~~,-and-landscape-architectural~~ services and negotiate contracts for such professional services on the basis of demonstrated competence and qualifications for the type of professional services required and at fair and reasonable prices.

Section 2. Definitions. Unless the context clearly indicates otherwise, the following definitions apply to [this act]:

(1) "Agency" means a state agency as defined in subsection ~~(8)~~ (7), local agency as defined in subsection ~~(5)~~ (4), or special district as defined in subsection ~~(7)~~ (6).

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(2) "Architectural, engineering, AND land surveying~~,-and---landscape--architectural--services"--or--"professional services~~" means services rendered by a person, other than as an employee of an agency, contracting to perform activities within the scope of the general definition of professional practice and licensed for the respective practice as an architect pursuant to Title 37, chapter 65, ~~a-landscape architect-pursuant-to-Title-37,-chapter-66,~~ or an engineer or land surveyor pursuant to Title 37, chapter 67.

(3) "Licensed professional" or "licensed architect, professional engineer, professional land surveyor" means a person providing professional services who is not an employee of the agency for which the services are provided and who is exempt under 18-8-103.

(4) "Local agency" means a city, town, county, special district, municipal corporation, agency, port district or authority, airport authority, political subdivision of any type, or any other entity or authority of local government, in corporate form or otherwise.

(5) "Person" means an individual, organization, group, association, partnership, firm, joint venture, or corporation.

(6) "Special district" means a unit of local government, other than a city, town, or county, authorized by law to perform a single function or a limited number of

SECOND READING

functions, including but not limited to water districts, irrigation districts, fire districts, school districts, community college districts, hospital districts, sewer districts, and transportation districts.

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Section 3. Public notice of agency requirements. Each agency shall publish in advance its requirement for professional services. The announcement must state concisely the general scope and nature of the project or work for which the services are required and the address of a representative of the agency who can provide further details. An agency may comply with this section by:

(1) publishing an announcement on each occasion when professional services provided by a licensed professional are required by the agency; or

(2) announcing generally to the public its projected requirement for any category or type of professional services.

Section 4. Procedures for selection. (1) In the procurement of architectural, engineering, AND land surveying~~,-and-landscape-architectural~~ services, the agency ~~shall~~ MAY encourage firms engaged in the lawful practice of their profession to submit annually a statement of

qualifications and performance data. The agency shall evaluate current statements of qualifications and performance data on file with the agency, together with those that may be submitted by other firms regarding the proposed project, and conduct discussions with ~~a-minimum-of three~~ ONE OR MORE firms regarding anticipated concepts and the relative utility of alternative methods of approach for furnishing the required services.

(2) The agency shall then select, based on criteria established under agency procedures and guidelines and the law, the firm considered most qualified to provide the services required for the proposed project. The agency procedures and guidelines must be available to the public and include at a minimum the following criteria as they relate to each firm:

(a) the qualifications of professional personnel to be assigned to the project;

(b) capability to meet time and project budget requirements;

(c) location;

(d) present and projected workloads;

(e) related experience on similar projects; and

(f) recent and current work for the agency. THE AGENCY SHALL FOLLOW THE MINIMUM CRITERIA OF [THIS ACT] IF NO OTHER AGENCY PROCEDURES ARE SPECIFICALLY ADOPTED.

Section 5. Negotiation of contract for services. (1) The agency shall negotiate a contract with the most qualified firm for architectural, engineering, AND land surveying~~,--or--landscape--architectural~~ services at a price which the agency determines to be fair and reasonable. In making its determination, the agency shall take into account the estimated value of the services to be rendered, as well as the scope, complexity, and professional nature thereof.

(2) If the agency is unable to negotiate a satisfactory contract with the firm selected at a price the agency determines to be fair and reasonable, negotiations with that firm must be formally terminated and the agency shall select other firms in accordance with [section 4] and continue as directed in this section until an agreement is reached or the process is terminated.

Section 6. Coordination with other statutes. (1) [This act] need not be complied with by an agency when the contracting authority makes a finding in accordance with this or any other applicable law that an emergency requires the immediate execution of the work involved. Nothing in [this act] relieves the contracting authority from complying with applicable law limiting emergency expenditures.

(2) The limitation on the preparation of working drawings contained in 18-2-111 applies to [this act].

(3) The procedure for appointment of architects and

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(4) The exception for services estimated to cost less than $5,000 in 18-8-105 applies to [this act].

SECTION 7. EXCEPTION. (1) ALL AGENCIES SECURING ARCHITECTURAL, ENGINEERING, AND LAND SURVEYING SERVICES FOR PROJECTS FOR WHICH THE FEES ARE ESTIMATED NOT TO EXCEED $5,000 MAY CONTRACT FOR THOSE PROFESSIONAL SERVICES BY DIRECT NEGOTIATION.

(2) NO AGENCY MAY SEPARATE SERVICE CONTRACTS OR SPLIT OR BREAK PROJECTS FOR THE PURPOSE OF CIRCUMVENTING THE PROVISIONS OF [THIS ACT].

Section 8. Extension of authority. Any existing authority of the department of administration to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Section 9. Saving clause. This act does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before the effective date of this act.

Section 10. Severability. If a part of this act is invalid, all valid parts that are severable from the invalid

part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 11. Effective date. This act is effective on passage and approval.

-End-

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THIRD READING

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REFERENCE BILL

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-End-

Form CS-32
Rev. 1985

STATUS SHEET

50th LEGISLATIVE SESSION

BUSINESS AND LABOR COMMITTEE

HOUSE BILL NUMBER	ENTERED COM. DATE	DATE CONSIDERED	OUT OF COM.	DO PASS DATE	DO NOT PASS DATE	DO PASS AS AMENDED DATE	DO NOT PASS AS AMENDED DATE	BE CONCURRED IN DATE	BE NOT CONCURRED IN DATE	BE CONCURRED IN AMENDED DATE	BE NOT CONCURRI IN AS AMENDEI DATE
257	1/19/87	1/28/87	1/28/87	1/28/87							
264	1/19/87	1/28/87	tabled 1/28/87								
278	1/19/87	1/28/87	1/28/87	1/28/87							
302	1/20/87	1/30/87	2/2/87	2/2/87							
310	1/20/87	1/29/87	1/29/87			1/29/87					
313	1/20/87	2/6/87	2/12/87			2/12/87					
332	1/20/87	1/29/87	1/29/87	1/29/87							
334	1/20/87	1/29/87	2/3/87	2/3/87							
345	1/24/87	2/2/87	2/2/87			2/2/87					
362	1/24/87	1/29/87	1/29/87			1/29/87					
363	1/24/87	2/2/87	2/2/87								
372	1/24/87	2/2/87	2/6/87			2/6/87					
373	1/24/87	2/2/87	2/11/87			2/11/87					
374	1/24/87	1/27/87	1/27/87			1/27/87					

CLOSING

Rep. Glaser stated that it was the intent that all contractors, subcontractors and material suppliers would be included under this bill. Some subcontractors and suppliers are having a difficult time surviving, he said, and it makes it worse when they aren't being paid promptly. The large contractor that is doing his job right is having a difficult time getting bids because other contractors are doing money tricks giving them an advantage.

HOUSE BILL NO. 310 - Establish Policy for Applicants Providing Architecture/Engineering/Land Surveying Services, sponsored by Rep. Les Kitselman, House District 95, Billings. Rep. Kitselman stated that this bill provides making the selection process as consistent as possible among the various state and local agencies, and special districts as well as conforming to the federal requirements for licensure. He commented that a public law enacted in 1972 placed in effect the selection of architectural and engineering services based on demonstrated competence and qualifications on federally funded projects. He stated an important part of the 1984 state building and construction advisory council report recommends the improvement of construction laws and the policies and procedures were to continue the department of administration's qualification base selection procedure for design professionals. This bill sets forth the minimum criteria to be used for qualification base selection, he said.

PROPONENTS

Jim Carpita, representing the Consulting Engineers Council of Montana. Mr. Carpita stated this bill would provide all levels of government with a standard selection procedure for awarding architectural, engineering, land surveying, and landscape architectural service contracts based on qualifications and competency of the professionals.
He said the state has already adopted a major portion of the American Bar Association codes. Exhibit No. 4.

Gordon Morris, Montana Association of Counties. Mr. Morris stated that he has reviewed the bill and discussed it with local county commissioners and finds no objection to the bill. He has also reviewed the amendments and finds them appropriate.

Stewart Pearson, representing the city of Great Falls. Mr. Pearson stated the proposal is parallel to the policy which was adopted by the city of Great Falls and would be appropriate to adopt at the legislative level. Exhibit No. 5.

Phil Porrini, President of the American Society of Civil Engineers in Montana. Mr. Porrini stated he agrees with the comments made by Jim Carpita and Stewart Pearson. Exhibit No. 6.

Marty Crennen, Architect, Helena. Mr. Crennen stated that he supports the bill.

H. S. (Sonny) Hanson, representing the Montana Technical Association of Design Professions, Billings. Mr. Hanson stated that they support the bill in its entirety.

OPPONENTS

None.

QUESTIONS

Rep. Brandewie asked how many landscape architects there were in the state of Montana. Mr. Hanson responded that there are three firms of landscape architects, two in Billings with offices in other states, and one in the western part of the state.

Rep. Brandewie asked Mr. Hanson if his understanding of the bill that a nursery with a landscape person wouldn't be qualified to bid under the provisions of this bill. Mr. Hanson stated nurseries are specifically excluded in the statute, but they can be selected for doing some of the design.

CLOSING

Rep. Kitselman made no further comments.

HOUSE JOINT RESOLUTION NO. 8 - Urges The Interstate Commission to Refrain From Approving Railroad Divestitures, sponsored by Rep. Harry Fritz, House District No. 56, Missoula. Rep. Fritz stated this resolution regards the purposed sale of the short line route between Laurel, Montana and Sandpoint, Idaho by the Burlington Northern. He said this raises a number of questions regarding the economy of Montana and the disposition of a number of railroad workers and the ability to get products, such as grain and lumber particularly, to market. He said the purpose of this resolution is to generate discussion in a formal and organized way about the impact of this sale upon our state.

PROPONENTS

James T. Mular, state legislative director of the Brotherhood of Railway and Airline Clerks. Mr. Mular stated that

EXECUTIVE ACTION - January 29, 1987 - 9:50 a.m.

ACTION ON HOUSE JOINT RESOLUTION NO. 8

Chairman Kitselman referred House Joint Resolution No. 8 to a subcommittee composed of Rep. Simon, Rep. Swysgood, and Rep. Bachini, with Rep. Simon as chairman.

ACTION ON HOUSE BILL NO. 334

Chairman Kitselman referred House Bill No. 334 to a subcommittee composed of Rep. Brandewie, Rep. Grinde, and Rep. Brown, with Rep. Brandewie as chairman.

ACTION ON HOUSE BILL NO. 386

Rep. Wallin moved that House Bill No. 386 DO PASS.

Rep. Cohen stated that this bill had problems including the new section that prohibits a municipal license fee. Also, he said, there are rules established for a person on active status; but if a person on inactive status at some later date, goes on to active status, all this bill provides is that the board has the right to make the necessary rules to put them on active status at some time in the future. He said there is no need for this bill, and recommends a no vote on the Do Pass motion.

Chairman Kitselman stated there is a need for a statement of intent for the bill which they did not have.

Rep. Brandewie stated that there are provisions for being inactive in other professions, but there is a time limit on how long a professional can be inactive; therefore, if the inactive status is left in the bill, he recommends that a time limit be placed on it, or the inactive provision be removed.

Rep. Simon moved an amendment to remove the reference to "inactive status" referred to on page 3 and amend the title. The motion carried with three opposed, Rep. Nisbet, Rep. Bachini, and Rep. Swysgood.

Rep. Thomas moved that House Bill No. 386 be tabled. The motion carried with a vote of 11 to 8, with Rep. Driscoll, Rep. Pavlovich, Rep. Brandewie, Rep. Nisbet, Rep. Bachini, Rep. Simon, Rep. Grinde, and Rep. Kitselman opposed.

ACTION ON HOUSE BILL NO. 310

Chairman Kitselman moved that House Bill No. 310 DO PASS.

Rep. Brandewie moved an amendment to strike all references to landscape architects. He stated that the language means that the people who are doing landscape designing and work in the communities cannot possibly bid on the jobs, and the bids would be narrowed down to two or three firms in the state who are landscape architects, who would do all of the designing, whatever the qualifications of someone in the community. The motion carried with Chairman Kitselman and Rep. Thomas opposed.

Chairman Kitselman moved the amendments as proposed. Exhibit No. 7. The motion carried unanimously.

Chairman Kitselman moved that House Bill No. 310 DO PASS AS AMENDED. The motion carried with Rep. Swysgood opposed.

ACTION ON HOUSE BILL NO. 332

Rep. Brown moved that House Bill No. 332 DO PASS. The motion carried with Rep. Hanson and Rep. Cohen opposed.

ACTION ON HOUSE BILL NO. 362

Rep. Thomas moved that House Bill No. 362 DO PASS.

Rep. Driscoll moved an amendment to the title to strike the words "certain building" and leave it as "requiring contractors". The motion carried unanimously.

Rep. Driscoll moved that House Bill No. 362 DO PASS AS AMENDED. The motion carried unanimously.

ACTION ON HOUSE BILL NO. 129

Rep. Driscoll moved DO PASS. The motion carried unanimously.

ACTION ON HOUSE BILL NO. 130

Rep. Driscoll moved DO PASS.

Rep. Driscoll moved the amendments. Rep. Driscoll said the argument has been if the 104 weeks starts from the day the person is hired or from the day of injury. He said this makes it clear that when a vocationally handicapped worker is hired and gets injured on the new employer's job, the new employer is only responsible for the first 104 weeks. The intent is to get these people that have been injured back to work and not impose the total cost on the new employer if there is a subsequent injury, he said. The motion carried unanimously.

DAILY ROLL CALL

BUSINESS & LABOR COMMITTEE

50th LEGISLATIVE SESSION -- 1987

Date January 29, 1987

NAME	PRESENT	ABSENT	EXCUSED
REP. LES KITSELMAN, CHAIRMAN	✓		
REP. FRED THOMAS, VICE-CHAIRMAN	✓		
REP. BOB BACHINI	✓		
REP. RAY BRANDEWIE	✓		
REP. JAN BROWN	✓		
REP. BEN COHEN	✓		
REP. JERRY DRISCOLL	✓		
REP. WILLIAM GLASER	✓		
REP. LARRY GRINDE	✓		
REP. STELLA JEAN HANSEN	✓		
REP. TOM JONES	✓		
REP. LLOYD MCCORMICK	✓		
REP. GERALD NISBET	✓		
REP. BOB PAVLOVICH	✓		
REP. BRUCE SIMON	✓		
REP. CLYDE SMITH	✓		
REP. CHARLES SWYSGOOD	✓		
REP. NORM WALLIN	✓		

CS-30

STANDING COMMITTEE REPORT

January 29 19 97

Mr. Speaker: We, the committee on BUSINESS AND LABOR

report HOUSE BILL NO. 310

☒ do pass ☐ be concurred in ☒ as amended
☐ do not pass ☐ be not concurred in ☐ statement of intent attached

REP. LES KITSELMAN Chairman

AMENDMENTS AS FOLLOWS:

1) Page 1, line 6
Following: "ENGINEERING,"
Insert: "AND"
Following: "SURVEYING"
Strike: the remainder of line 6 and line 7 through "ARCHI-
TECTURAL"

2) Page 1, line 14
Following: "engineering,"
Insert: "and"
Following: "surveying"
Strike: the remainder of line 14

3) Page 1, line 23
Following: "subsection"
Strike: "(8)"
Insert: "(7)"
Following: "subsection"
Strike: "(5)"
Insert: "(4)"

4. Page 1, line 24
Following: "subsection"
Strike: "(7)"
Insert: "(6)"

5) Page 1, line 25
Following: "engineering,"
Insert: "and"
Following: "surveying"
Strike: the remainder of line 25 and line 1, page 2 through
"services"

6) Page 2, line 8
Following: "65,"
Strike: the remainder of line 8 and line 9 through "66,"

FIRST reading copy (WHITE color)

7) Page 3, line 11
Following: "engineering,"
Insert: "and"
Following: "surveying"
Strike: the remainder of line 21 and line 22 through "architectural"

8) Page 3, line 23
Following: "agency"
Strike: "shall"
Insert: "may"

9) Page 4, line 4
Following: "with"
Strike: "a minimum of three"
Insert: "one or more"

10) Page 4, line 21
Following: "agency."
Insert: "The agency shall follow the minimum criteria of (this act) if no other agency procedures are specifically adopted."

11) Page 4, line 24
Following: "engineering,"
Insert: "and"

12) Page 4, line 25
Following: "surveying"
Strike: ", or landscape architectural"

13) Page 6, line 4
Following: line 3
Insert: "SECTION 7. EXCEPTION (1) All agencies securing architectural, engineering, and land surveying services for projects for which the fees are estimated not to exceed $5,000 may contract for those professional services by direct negotiation.

(2) No agency may separate service contracts or split or break projects for the purpose of circumventing the provisions of (this act)."

Renumber: subsequent sections.

Chairman.

STATE PUB. CO.
Helena, Mont.

EXHIBIT 4
DATE 1/29/82
HB 310

HOUSE BILL NO. 310

PRESENTED TO THE HOUSE BUSINESS AND LABOR COMMITTEE
BY
JAMES B. CARPITA, P.E.,
REPRESENTING THE
CONSULTING ENGINEERS COUNCIL OF MONTANA

House Bill No. 310 will provide all levels of government with a standard selection procedure for awarding architectural, engineering, land surveying and landscape architectural service contracts based upon qualifications and competence of the professionals involved.

The selection procedure outlined in the bill is based upon the American Bar Association's "Model Procurement Code for State and Local Governments". The State of Montana has already adopted a major portion of the ABA's model code. As stated in the model code, the primary reasons for using the qualification-based, negotiated selection procedure is the "lack of definite scope of work for such services at the time the selection is made and the importance of selecting the best qualified firm". The attached pamphlet "*Procurement of Professional Design Services*" was prepared by the Interprofessional Council on Environmental Design to further explain the ABA model code and the advantages of using negotiated procurement procedures based upon qualifications.

The 48th Legislature authorized the formation of a State Building Construction Advisory Council. This council was established to determine if the existing construction policies and procedures effectively satisfy the needs of the State. In reviewing the design professional selection procedures, the Council unanimously voted to continue the Department of

EXHIBIT 2
DATE 1/27/87
HB 310

Administration's qualification-based selection procedure. Similarly, the Department of Natural Resources and Conservation has reprinted the attached booklet "*Model Competitive Procurement Procedure*" for distribution to local government, public service and institutional entities.

Prior to this 50th Legislative Session, the Consulting Engineers Council of Montana distributed to each Representative and Senator a Summary of Points supporting qualification-based procurement of professional services. That summary noted that 29 other states have adopted similar procurement legislation. (See attached map). In fact, the State of Montana does have laws on the books that do exempt architects, engineers and land surveyors from bidding for State contracts. Governor Schwinden has issued a Management Memorandum to all State Department Heads which requires the use of qualification-based selection procedures. In addition, Montana's school districts are also required to use this type of procurement procedure for architectural services. Copies of the applicable sections of Montana laws are attached for your ready reference.

In discussing House Bill No. 310 with the various Associations representing the public section contracting profession services, certain amendments were discussed. The attached list of proposed amendments were reviewed by Mr. Bruce Moerer with the Montana School Board Association and if made a part of HB310, they, the MSBA would not have any objections to this Bill.

EXHIBIT
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HB 310

Further, Mr. Gordon Morris with the Montana Association of Counties has reviewed the Bill and supports its passage.

The Consulting Engineers Council of Montana urges this Committee to recommend passage of HB310 with the proposed amendments.

\JC\HB310

lccording to law ...

lblic agencies are not required to use competitive price bidding as a means selecting architectural and engineering consulting firms for public projects. ·ms should be selected on the basis of expertise.

pecifically ...

ederal projects and those involving :deral grants: Federal law (Brooks Bill, ublic Law 92-582, 1972) requires public gencies "to negotiate contracts for ·chitectural and engineering services on the asis of demonstrated competence and ualification for the type of professional ervices required ..."

his Federal selection procedure must be llowed on Federal projects and, when pecifically stated, on grant programs to all olitical subdivisions. If not stated in the rant, the local selection procedure is ccepted.

tate of Montana-funded projects: or State buildings, (new construction, emodeling, renovation) Section 18-2-112 lontana Codes Annotated, requires the ontracting public agency to review and ecommend three qualified firms to the epartment of Administration for evaluation, anking and selection. This selection is ubject to approval by the Board of Examiners. Compensation is negotiated after election.

'Registered professional engineers, urveyors, real estate appraisers or egistered architects concerned with the tudy, design, or construction of state acilities or highways" are specifically xempted from price bidding by the Consultants' bill, passed by the 1981 Legislature and signed by Governor Schwinden. Section 18-8-101 through 106 and Section 18-8-111 and 112, MCA.

Local School District projects: For schools, Section 20-6-633, Montana Codes Annotated, specifically states an architect must be selected for a project before compensation is negotiated. If school trustees and the design firm are unable to negotiate fair and reasonable compensation, trustees may select another firm and negotiate with it.

County and Municipal Projects: Whenever State or Federal funds are involved, the laws cited above apply. If funding is strictly local, or the project is wholly owned, the governing body determines the selection process — in the vast majority of cases, the same guidelines as used for State and Federal projects are followed.

Municipal Contracts and Franchises: Section 7-5-4301, Montana Codes Annotated, specifically excludes architects and engineers from the bidding process which is prescribed for selection of most other vendors in Sections 7-5-4302-4307.

How to select the best firm for your project.

These logical selecti guidelines will help you choose the best firm for your project **and** comply with the law.

1. Make a public announcement, in accor with applicable laws and your agency's policy, that architectural/engineering services are needed. Briefly describe the scope, location, timetable and budget, if available. Small, paid advertisement and/or letters (sent to firms listed in professional an Yellow Pages directories, as well as those whom you know are interested) are the usu way of making this announcement.

2. Appoint an appropriate Evaluation Board to select and interview the best-qualified firms. The Board, comprised of three to five people, should select and interview no more than three to five firms responding to Step 1.

3. Conduct in-depth interviews with the three to five selected firms, probing their expertise, ingenuity, current work load and any similar projects which they might have handled. Then, rank the firms in 1-2-3 orde

4. Review the project with the most qualified firm and negotiate the fee. If an agreement cannot be reached, formally terminate negotiations. Then, undertake negotiations with the second-ranked firm.

EXHIBIT
DATE

(2) The funds so accumulated shall be held and dedicated for the purpose of constructing capitol buildings or additions thereto in accordance with the provisions of section 12 of The Enabling Act.

History: (1)En. Sec. 1, Ch. 120, L. 1943; amd. Sec. 49, Ch. 147, L. 1963; Sec. 78-501, R.C.M. 1947; (2)En. Sec. 3, Ch. 120, L. 1943; amd. Sec. 50, Ch. 147, L. 1963; Sec. 78-503, R.C.M. 1947; R.C.M. 1947, 78-501, 78-503; amd. Sec. 2, Ch. 277, L. 1983.

Compiler's Comments

1983 Amendment: In (1), substituted "a capital projects fund" for "the federal and private revenue fund".

Cross-References

Deposit of funds in the hands of the State Treasurer, 17-6-101.

18-2-108. Compliance with state laws and regulations. All buildings built or leased or purchased under this title must comply with all laws, safety codes, and rules of the state of Montana.

History: En. 82-3315.8 by Sec. 8, Ch. 242, L. 1974; R.C.M. 1947, 82-3315.8.

Cross-References

Building construction standards, Title 50, ch. 60.

18-2-109 and 18-2-110 reserved.

18-2-111. Policy regarding practice of architecture — preparation of working drawings by department limited. (1) It is the policy of the state not to engage in the practice of architecture; however, this policy shall not be construed as prohibiting the department of administration from:

(a) engaging in preplanning functions necessary to prepare a building program for presentation to the legislature;

(b) supervising construction as provided in 18-2-105(6); or

(c) preparing working drawings for minor projects.

(2) The department of administration is expressly prohibited from preparing working drawings for the construction of a building, with the exception of repair or maintenance projects, when the total cost of the construction will exceed $25,000.

History: En. Sec. 20, Ch. 271, L. 1963; amd. Sec. 1, Ch. 371, L. 1977; R.C.M. 1947, 82-3320; amd. Sec. 3, Ch. 491, L. 1983.

Compiler's Comments

1983 Amendment: In (2), inserted "with the exception of repair or maintenance projects".

Cross-References

Preparation of building programs and submission to Department of Administration, 17-7-202.
Architecture, Title 37, ch. 65.

18-2-112. Appointment of architects and consulting engineers. The department of administration shall appoint any architect or consulting engineer retained for work on any building to be constructed, remodeled, or renovated by the state of Montana, its boards, institutions, and agencies from a list of three architects or consulting engineers proposed by the state board, institution, or agency where the work is to be done. Such appointment shall be subject to the approval of the state board of examiners. The department need not appoint an architect or consulting engineer for repair or maintenance projects.

History: En. Sec. 19, Ch. 271, L. 1963; amd. Sec. 1, Ch. 231, L. 1965; amd. Sec. 1, Ch. 83, L. 1973; amd. Sec. 98, Ch. 326, L. 1974; R.C.M. 1947, 82-3319; amd. Sec. 4, Ch. 491, L. 1983.

Compiler's Comments

1983 Amendment: Inserted last sentence.

Cross-References

Appointment of architect, 18-3-102.

proj... rules ...
dep...
ca...
a... ...tana property for

1. ...lease with option to purchase. When authorized by a vote of ... of the members of each house of the legislature, the department of ...inistration shall have the authority, as part of the long-range building p...gram, to enter into a rental contract which provides an option to purchase a building to be used by the state or any department of state government.

History: En. 82-3315.1 by Sec. 1, Ch. 242, L. 1974; R.C.M. 1947, 82-3315.1.

Cross-References
Long-range building program bonds, Title 17, ch. 5, part 4.
General powers and duties of Department of Administration, 18-2-105.

18-3-102. Appointment of architect. The department of administration may appoint an architect to draw plans and specifications for the construction of a building authorized by this chapter, subject to the approval of the board of examiners.

History: En. 82-3315.4 by Sec. 4, Ch. 242, L. 1974; R.C.M. 1947, 82-3315.4.

Cross-References
Appointment of architects and consulting engineers, 18-2-112.

18-3-103. Awarding contract. In awarding a contract, the department of administration shall follow the same procedures that are required for the award of a contract to construct a state-owned building. The department shall have the authority to reject any and all bids.

History: En. 82-3315.7 by Sec. 7, Ch. 242, L. 1974; R.C.M. 1947, 82-3315.7.

Cross-References
Construction contracts — general provisions, Title 18, ch. 2, part 1.
Bids required — advertising, 18-2-301.

18-3-104. Contract provisions. The rental contract shall be for a period not to exceed 20 years with an option to purchase at the end of specific periods determined by the department of administration and clearly defined in the contract for each individual project. The option to purchase at the end of the contract period shall not exceed the amount of $50,000. The contract shall provide for the appointment of a trustee with sufficient powers to protect the state's interest in the building and any property conveyed as a building site. The contract shall contain such other provisions as determined by the department of administration to be necessary.

History: En. 82-3315.5 by Sec. 5, Ch. 242, L. 1974; R.C.M. 1947, 82-3315.5.

Cross-References
Contracts — formation and interpretation, Title 28, ch. 2 and 3.
Trustees' Powers Act, Title 72, ch. 21.

18-3-105. Location of building. The building shall be located as determined by the terms of the call for bids. If any such contract requires the sale

18-8-101. Purpose.
18-8-102. Definitions.
18-8-103. Exemptions.
18-8-104. Use and selection of private consultants.
18-8-105. Solicitation of bids.
18-8-106. Restriction on former employees.
18-8-107 through 18-8-110 reserved.
18-8-111. Information relating to consultant studies.
18-8-112. Contract in violation void.

Part 1
Consultants

18-8-101. Purpose. (1) It is the intent of the legislature that this part be interpreted in a manner that assures the greatest fair competition in the selection by state agencies of private consultants under contracts covered by this part and that assures that all potential providers of consulting services are afforded notice of the need for and opportunity to provide the services.

(2) This part is not intended to discourage the use by state agencies of private consultants if their use may reasonably be expected to result in a more efficient and less costly operation or project. This part is not intended to prohibit the letting of a sole-source contract for consulting services if no proposal is received from a competent, knowledgeable, and qualified private consultant at a reasonable fee, after the procedures set forth in this part have been followed.

History: En. Sec. 1, Ch. 547, L. 1981.

18-8-102. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Consulting service" means the human service of studying or advising an agency under an independent contract. However, the term is limited to professional consulting service work provided to an agency under an independent contract with a private consultant, but does not include the making of periodic or routine reports or the collection of routine data necessary to the functioning of a state agency or its programs or necessary for the proper monitoring of private providers of human services regulated by a state agency. The term includes only services for which payment is made from funds:

(a) that are appropriated by the legislature;

(b) that are generated by statutory functions of the agency; or

(c) that are received by the state from the federal government and that are awarded to the state without requiring the state to request the funds through a grant program.

(2) "Private consultant" means an entity that performs consulting services other than a state agency or employee.

(3) "State agency" means any state department, commission, board, office, institution, facility, or other agency, including a university system or an institution of higher education.

History: En. Sec. 2, Ch. 547, L. 1981.

18-8-103. Exemptions. This part does not apply to employment of:

(1) registered professional engineers, surveyors, real estate appraisers, or registered architects;

(2) physicians, dentists, or other medical, dental, or health-care provid

(3) expert witnesses hired for use in litigation, hearings officers hired rulemaking and contested case proceedings under the Montana Administra Procedure Act, or attorneys as specified by executive order of the gover or

(4) consulting actuaries to the public retirement boards.

History: En. Sec. 3, Ch. 547, L. 1981; amd. Sec. 1, Ch. 215, L. 1983; amd. Sec. 1, Ch. 201, L. 1985.

Compiler's Comments

1985 Amendment: Inserted (4).

1983 Amendment: In (1), after "architects" deleted "concerned with the study, design, or construction of state facilities or highways".

Cross-References

Employment of actuary — biennial inve tion and valuation, 19-3-305.

Teachers' retirement — actuary, 19-4-201.

18-8-104. Use and selection of private consultants. (1) A state agency may use a private consultant only if:

(a) there is a substantial need for the consulting services; and

(b) the state agency cannot adequately perform the consulting servic with its own personnel.

(2) In selecting a private consultant, a state agency shall:

(a) base its choice on demonstrated competence, knowledge, and qualifications and on the reasonableness of the proposed fee for the services; and

(b) when other considerations are equal, give a preference to a private consultant who is a bona fide resident of Montana as defined in 18-2-401 and whose principal place of business is within the state or who will manage the consulting engagement wholly from one of its offices within the state.

History: En. Sec. 4, Ch. 547, L. 1981.

18-8-105. Solicitation of bids. (1) In order to contract with a private consultant, a state agency shall establish a bid list in its central office. Any private consultant who desires to submit bids to that agency to provide consulting services may request in writing the agency place him on the agency's bid list.

(2) Whenever it is reasonably foreseeable that a proposed contract for private consultant services will exceed $5,000, the state agency shall notify all private consultants who have requested to be placed on the agency's bid list. The notice shall contain the following:

(a) a notice of invitation for offers of consulting services;

(b) the name and address of the person within the agency to be contacted by a private consultant wishing to make an offer;

(c) the closing date for receipt of offers of consulting services;

(d) the procedures and specifications upon which the agency will award the contract for consulting services; and

(e) any other information that the agency believes pertinent.

(3) In addition to the notification required in subsection (2), the state agency, in its discretion, may solicit bids for consultant services by advertisement or other means.

(4) An agency need not follow the provisions of this section in bona fide emergency situations.

History: En. Sec. 6, Ch. 547, L. 1981; amd. Sec. 1, Ch. 509, L. 1983.

Compiler's Comments

1983 Amendment: At end of first sentence in (1), following "central office" deleted "or in another appropriate division or unit of the agency".

any contract for the construction of school facilities until the plans and specifications for such construction have been approved under the provisions of 20-6-622.

(2) Any contractor, architect, trustee, or any other person, firm, or corporation who shall violate the provisions of 20-6-622, this section, or any regulation promulgated by the state board of health and environmental sciences or the state fire marshal shall be deemed guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not less than $100 or more than $500.

History: En. 75-8208 by Sec. 480, Ch. 5, L. 1971; R.C.M. 1947, 75-8208.

Cross-References

Lapse of budgeted appropriations and provision for unpaid claims, 20-9-209.

Fire safety in public buildings, Title 50, ch. 61.

20-6-625. Authorization to lease buildings or land for school purposes. The trustees of any district may lease buildings or land suitable for school purposes when it is within the best interests of the district to lease such building or land from the county, municipality, another district, or any person. The lease may be for a term of not more than 3 years unless prior approval of the qualified electors of the district is obtained in the manner prescribed by law for school elections, in which case the lease may be for a term of not more than 99 years. Whenever the lease is for a period of time that is longer than the current school fiscal year, the lease requirements for the succeeding school fiscal years shall be an obligation of the final budgets for such years.

History: En. 75-8209 by Sec. 481, Ch. 5, L. 1971; amd. Sec. 2, Ch. 424, L. 1977; R.C.M. 1947, 75-8209.

Cross-References

School fiscal year, 20-1-301.

Lease or purchase of state property for postsecondary vocational-technical center purposes, 20-7-314.

School elections, Title 20, ch. 20.

20-6-626 through 20-6-630 reserved.

20-6-631. When contracts for architectural services required. Whenever the estimated cost of any building, furnishing, repairing, or other work for the benefit of a school district exceeds $50,000 and requires architectural services, such services shall be by contract.

History: En. 75-6815 by Sec. 1, Ch. 370, L. 1975; R.C.M. 1947, 75-6815.

20-6-632. Repealed. Sec. 1, Ch. 422, L. 1979.

History: En. 75-6816 by Sec. 2, Ch. 370, L. 1975; R.C.M. 1947, 75-6816.

20-6-633. Negotiation of fees. After selecting a firm, the trustees shall negotiate with the selected firm a fair and reasonable fee for the architectural services as described by the school district's scope of the work. In the event the trustees and the firm are unable to negotiate a fair and reasonable fee, the trustees may select another firm, provided the trustees again give reasonable public notice of their selection.

History: En. 75-6817 by Sec. 3, Ch. 370, L. 1975; R.C.M. 1947, 75-6817.

States passing qualifications-based selection laws since June 1982.

States with qualifications-based selection laws adopted prior to June 1982.

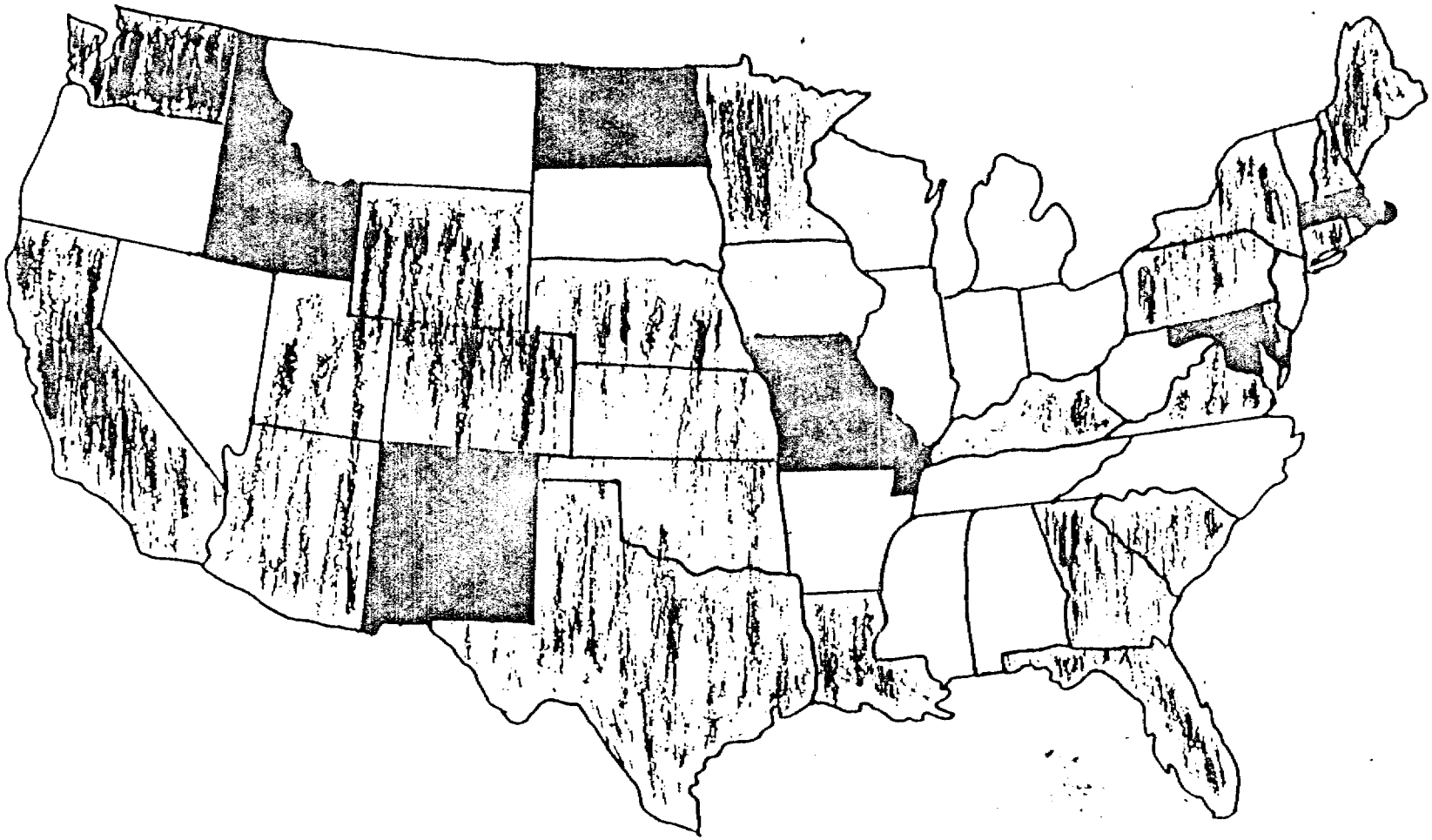


EXHIBIT 5
DATE 1/29/87
HB 310

COMMENTS

BY THE CITY OF GREAT FALLS

ON

H.B. #310

POSITION

The City of Great Falls supports and advocates adoption of H.B. #310.

ADVANTAGES OF THE PROPOSED LEGISLATION

This bill is necessary tool for Montanans because 1) it establishes a standard, 2) provides for increased competition and 3) conforms to canons of the respective professions.

By providing this standard, a written procedure for local administrators is available that defines the process on how the local agency is to proceed in obtaining special talent to perform the necessary work. Also, it allows the local agency the necessary flexibility to define how, in what manner and sequence a particular task is accomplished.

Increased competition results from publishing the need of special services. Each provider of services knows that all practitioners in a discipline have been given notice and have the opportunity to compete for the same work. The knowledge of others also having an opportunity for consideration provides the incentive to keep abreast of current technology changes and to manage business operations in a cost effective manner.

The canons of each profession addressed by the bill embrace and endorse the procedure proposed by the bill. Therefore unanimous support from the professions can be expected.

CITY POLICY

The City of Great Falls adopted a policy parallel to the proposed bill in December, 1986, (copy attached) to provide a similar guidance to all City Departments. Too many differing procedures were being utilized in procurement of professional services and the Professional Community was critical of the multitude of procedures. A committee comprised of the major professional groups and the City developed the Policy. Subsequently the City Commission adopted the Policy for implementation.

Submitted by:

Stewart Pearson, City Engineer
January 29, 1987

EXHIBIT
DATE
HB

ARCHITECTS/ENGINEERS SELECTION POLICY

CITY OF GREAT FALLS

DECEMBER 16, 1986

PURPOSE:

To provide for a systematic procurement of Architect/Engineer Services and insure the best qualified talent is obtained to perform services for the public.

CATEGORIES:

Projects are classified according to the criteria of either being less than or more than $10,000 compensation to the professional. Those projects with less than $10,000 professional compensation shall be considered minor projects and those projects with more than $10,000 of professional compensation shall be considered major projects.

ANNUAL FILING:

The City shall at the beginning of each year invite the filing of Standard Federal Government Form 254 from each firm wishing to be considered for major projects. All firms within the City that desire to be placed on the minor projects list should notify Technical Services of the Community Development Department of the classification for placement.

SERVICES PROCUREMENT PROCEDURE:

The Department requiring architecture and engineering services notifies the Community Development Department. Technical Services Division reviews funding and develops work description based on needs and funding. The project is classified as either a Minor or Major project and handled according to the following options.

MINOR PROJECTS

The City policy on Minor Projects is that they will be rotated among the firms that are qualified to perform the work. For purposes of classification the City initially establishes Architects, Engineers/Surveyors as the categories in which each firm can classify itself and only one listing per firm is allowed in the minor project category.

The first qualified firm will be contacted for a proposal, if agreement cannot be reached on compensation, the City will inform the first that negotiations are being discontinued and negotiations with the next qualified firm will begin. The process will continue until an agreement is reached. Firms awarded work will have their listing moved to the bottom of the list and those whose negotiations are discontinued will remain in their present position on the list.

MAJOR PROJECTS

The City Pre-Selection Committee will advertise for Federal Government Standard Form 254/255* and/or a Statement of Interest, as determined necessary, to initially identify all firms to be considered for the project.

EXHIBIT 5
DATE
HB 310

Background Rating

Evaluation of services offered will be a two part process comprised of a Background and Interview Rating. The Background and Interview Ratings will each contain 50% of the total points of the ranking. The Background element of the ranking will contain, in addition to the Project Needs Criteria, elements for Local Business (LB), Previous Work (PW), and Project Familiarity (PF). The Pre-Selection Committee established the point assignments for the Project Needs Criteria and the LB, PW, and PF. LB can range between zero and fifteen (0 and 15) points whereas PW and PF can range between zero and ten (0 and 10) points. Interested consultants will be issued the Background Rating Criteria and point assignments prior to submittal of the 254/255* forms.

From three (3) to seven (7) firms who will be selected for interview by the Pre-Selection Committee.

Interview Rating

Prior to the interview an outline program, scope of services and proposed budget figure would be provided to the interviewee's along with the evaluation criteria and the points for each of the criteria. Notice will also be given of all interviewee's to all firms to be interviewed.

Proposals

Total scores will be compiled from the background and interview rating to determine the firm ranking. The Department Director will review the ranking and establish a date for a final proposal. Technical Services will negotiate the final proposal and submit the proposal to the Director on the requested date. If a satisfactory proposal cannot be obtained from the top ranked firm, the second ranked firm will be contacted for a proposal.

Adopted: December 16, 1986

* 255 will contain ten (10) years of historical projects instead of five (5) years.

EXHIBIT 6
DATE 1/29/87
HB 310

WITNESS STATEMENT

NAME Phil Porini BILL NO. HB 310

ADDRESS 922 Maple DATE 1/29/87

WHOM DO YOU REPRESENT? American Society of Civil Engineers

SUPPORT ✓ OPPOSE _____ AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

Contact for additional information

442-3050 Office

442-8553 Home

EXHIBIT 6
DATE 1/29/87
HB 310

TESTIMONY HB-310

BUSINESS AND LABOR COMMITTEE

MONTANA HOUSE OF REPRESENTATIVES

JANUARY 29, 1987
8:00 AM

INTRODUCTION by Phil Porrini, President of the Montana Section of the American Society of Civil Engineers.

The Montana Section of the American Society of Civil Engineers (ASCE) supports House Bill 310.

Our technical society is comprised of:
over 400 members,

of which 35 percent are from the public sector (Federal, State and Local governments),

55 percent are from the private sector (Private industry and consultants),

and the remaining 10 percent are retired civil engineers and student members.

ASCE strongly endorses the concept of qualifications based selection of architectural, engineering, land surveying and landscape architectural services.

Thank you for your consideration of this legislation.

testimony.310

Phil Porrini

EXHIBIT
DATE 1/29/87
HB 310

HOUSE BILL NO. 310

AMENDMENT NO. 1
Page No. 1, Line No. 23
Following: "Subsection"
Strike: "(8)"
Insert: "(7)"

AMENDMENT NO. 2
Page No. 1, Line No. 23
Following: "...as defined in subsection"
Strike: "(5)"
Insert: "(4)"

AMENDMENT NO. 3
Page No. 1, Line No. 24
Following: "subsection"
Strike: "(7)"
Insert: "(6)"

AMENDMENT NO. 4
Page No. 3, Line No. 22
Following: "--- the Agency"
Strike: "Shall"
Insert: "May"

AMENDMENT NO. 5
Page No. 4, Line No. 4
Following: "Discussions with"
Strike: "a minimum of three"
Insert: "one or more"

AMENDMENT NO. 6
Page No. 4, Line No. 21
Following: "--- for the agency."
Add: "The agency shall follow the minimum criteria of [this act] in the event no other agency procedures are specifically adopted."

AMENDMENT NO. 7
Page No. 6, Line No. 3
Following: "---to (this act)"
Add: "SECTION 7. EXCEPTION (1) All agencies securing architectural, engineering, land surveying and landscape architectural services for projects for which the fees are estimated not to exceed $5,000 may contract for such professional services by direct negotiation. (2) No agency shall separate service contracts or split or break projects for the purpose of circumventing the provisions of [this act]."

(Cont. HB 310)

AMENDMENT NO. 8
Page No. 6, Line No. 4
Following: "Section"
Strike: "7"
Insert: "8"

AMENDMENT NO. 9
Page No. 6, Line No. 8
Following: "Section"
Strike: "8"
Insert: "9"

AMENDMENT NO. 10
Page No. 6, Line No. 12
Following: "Section"
Strike: "9"
Insert: "10"

AMENDMENT NO. 11
Page No. 6, Line No. 18
Following: "Section"
Strike: "10"
Insert: "11"

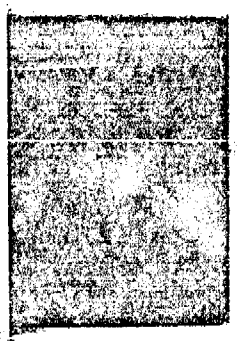
\JC\0127JP.LST

EXHIBIT 9
DATE 1/29/87 3/10

MODEL COMPETITIVE PROCUREMENT PROCEDURE

For Professional
Engineering and
Land Surveying
Services

For Local Government,
Public Service and
Institutional Entities



free from

DNRC Energy Division
Capitol Station
Helena, MT 59620

Montana Department of
Natural Resources and Conservation

VISITORS' REGISTER

BUSINESS AND LABOR COMMITTEE

BILL NO. House Bill No. 310 DATE January 29, 1987

SPONSOR Rep. Les Kitselman

NAME (please print)	RESIDENCE	SUPPORT	OPPOSE
JERRY PETERSON	GREAT FALLS	X	
Stu Pearson	" "	X	
James B Carrita	Hamilton	X	
PHIL PORRINI	HELENA	X	
John Morrison Jr.	Helena	X	
H S Hauson	Bill	X	
Marty Crimmen	Helena	X	
Gordon Morris	MACo	X	
Jim Whaley	HELENA	X	

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

CS-33

COMMITTEE--(S) BUSINESS & INDUSTRY

RUN TIME 08:32
RUN DATE.... 04/22/87

CHAIRMAN--SEN. ALLEN C. KOLSTAD
NORMAL SCHEDULE==> SITE: ROOM 410 DAYS: MON THRU FRI TIME: 10:00 A.M.

SECRETARY-CAROLYN LINDEN

BILL NO	REFER DATE	HEARING DATE	CONSIDERATION DATES	COMMITTEE ACTION	REREFERRED TO COMM	DATE OUT
HB0228	2/10	3/03	3/3/87	CONCUR		3/3/87
SWYSGOOD, CHUCK			REMOVE AUTOMATIC STAY OF INSURANCE COMMISSIONER'S ORDER UPON APPEAL			
HB0232	2/19	3/05	3/5/87	CONCUR		3/5/87
THOMAS, FRED			INCREASE FEE FOR REVIVAL OF CORPORATION AFTER SUSPENSION OR FORFEITURE			
HB0240	3/02	3/09	3/9/87; 3/10/87; 3/11/87 3/12/87	CONCUR		3/12/87
THOMAS, FRED			REVISE LAW RELATING TO INSURANCE BAD FAITH CLAIMS			
HB0242	2/02	3/13	3/13/87	CONCUR		3/13/87
HARPER, HAL			EXPANDS UTILITY CONSERVATION EXPENDITURES ELIGIBLE FOR RATE BASE INCLUSION			
HB0254	2/02	2/13	2/13/87; 2/16/87; 2/17/87	CONCUR AS AMENDED		2/17/87
THOMAS, FRED			REGULATE CANCELLATION OR NONRENEWAL OF PROPERTY AND CASUALTY INSURANCE			
HB0257	2/02	2/20	2/20/87	CONCUR		2/20/87
BRANDEWIE, RAY			REVISE LICENSING REQUIREMENTS FOR LAND SURVEYORS			
HB0278	2/02	3/03	3/3/87	CONCUR		3/3/87
GRADY, ED			VEHICLE LIAB.--PROCESS CANCELLED POLICY PRO RATA BASIS; RETURN UNEARN. PREM.			
HB0310	2/03	2/10	2/10/87; 2/11/87	CONCUR		2/11/87
KITSELMAN, LES			ESTABLISH POLICY FOR APPLICANTS PROVIDING ARCHIT/ENG/LAND SURVEYING SERVICES			
HB0332	2/03	2/17	2/17/87	CONCUR		2/17/87
BROWN, JAN			ALLOW PSC TO ISSUE PROTECTIVE ORDERS FOR PROPRIETARY INFORMATION			
HB0334	2/10	2/20	2/20/87	CONCUR		2/20/87
KEENAN, NANCY			GENERALLY REVISE LICENSING OF SOCIAL WORKERS, PROFESSIONAL COUNSELORS			
HB0362	2/04	3/10	3/10/87; 3/11/87	TABLED		TABLED 3/11/87
GLASER, BILL			PENALTY FOR BUILDING CONTRACTOR FAILING TO PAY SUBCONTRACTOR PROMPTLY			

CONSIDERATION OF HOUSE BILL 310: Rep. Les. Kitselman, House District 95, Billings, is the chief sponsor of this bill. In his absence, Mr. H. S. "Sonny" Hanson, Billings, Montana Technical Council, presented opening remarks regarding the bill. He stated that it deals with the standardization of the selection procedure for awarding architectural, engineering and land surveying services under public contract. The contracts will be awarded based upon the qualifications and competence of the professionals involved. The bill also provides for emergencies necessitating immediate execution of the work and provides for an immediate effective date. Mr. Hanson noted that design professionals throughout the state have been informed regarding HB 310 and all understand its workings.

PROPONENTS: Mr. James B. Carpita, Corvallis, Representing Consulting Engineers Council of Montana, stood in support of the bill and distributed pamphlets for the information of the committee. He also submitted written testimony. (EXHIBITS 5, 6, 7, 8, & 9)

Mr. Jim Cummings, Great Falls, also representing the CECM testified on behalf of the bill. He stated that he had worked with the City of Great Falls in adopting a standard procedure for selection of design professionals. They based their procedure on one better known as the Brooks bill which has been use since 1972. He noted that all federal agencies use it. In dealing with state agencies he has realized that every state agency has a different selection process which he feels is very time consuming and confusing. He urged the support of the committee for HB 310 and then submitted a letter in support of the bill prepared by Stewart Pearson, City Engineer, City of Great Falls. (EXHIBIT 10)

Mr. Phil Porrini, Helena, representing the American Society of Civil Engineers, rose in support of HB 310 and submitted written testimony. (EXHIBIT 11)

Mr. Martin W. Crennen, Helena, representing the Montana Chapter of the American Institute of Architects, submitted written testimony in support of the bill. (EXHIBIT 12)

OPPONENTS: There were no opponents to HB 310.

DISCUSSION OF HOUSE BILL NO. 310: Chairman Kolstad called for questions from the committee. Sen. Williams asked Mr. Hanson what prompted this bill and Mr. Hanson replied that

it would allow a clear standardization of the selection procedures when it comes to design professionals. This is an advantage in many cases because when professional services are purchased, the cheapest bid is not always the best and that should not be the final qualification upon which those selections are made. This will give agencies the leeway to select the best qualified bidder who offers a reasonable bid. Sen. Williams then wanted to know what would happen in the case of the land surveyor. He noted that there are two kinds and both are certified, but one works a lot cheaper than the other. Would this keep any land surveyors that are now certified from being qualified bidders? Mr. Hanson answered, "no".

Sen. Walker wanted it clarified whether the decisions would now be based almost exclusively on the qualifications or if the price would still be a factor. Mr. Hanson answered that according to the bill, the price would still be taken into consideration and it would have to be deemed reasonable.

Sen. Neuman asked Mr. Hanson what would happen to the young architect, professional or new firm just starting out and whether they would be able to compete under this system. Mr. Hanson answered that all of them could submit their qualifications and all would compete with each other. If there were a small project, a small two person firm might be selected over a bigger firm. The option would be up to the selection committee. If it were felt that a firm from New York could give better service, then that firm might be chosen. The design professionals do not see that as a problem. It will give agencies the option to shop around and pass the work around. Many times the new firms or professionals are considered the up-and-coming firms of the future and would have a better chance than an older firm. Sen. Neuman still felt the guy with 25 years experience would always have the edge. Mr. Cummings interjected that he didn't feel an agency would want to hire a brand new firm or professional to do a huge, terribly complex project, but they could always be given more consideration for jobs not quite so complex while they were gaining experience. He stated that he had gone out of state and worked for four years to gain some experience and that is what many people do. He stressed that this bill allows those selection committees the flexibility to select all different types of bidders.

Sen. Thayer asked if the $5,000 figure in the bill (which refers to the cases when an agency may directly negotiate

with a professional for such services if the fees are estimated not to exceed that figure) would cause a problem for the City of Great Falls whose adopted procedures allow a $10,000 limit. Mr. Carpita answered that they do not see that as a problem.

Sen. Weeding stated that he was searching for the need for the bill as it seemed to him that it contained pretty general things that any prudent board would do without written guidelines. Mr. Carpita answered that it is a set of general guidelines because many times you have a group who are not used to doing this type of selection process and it gives them something to follow. He noted that the Great Fall's one gives no detail; also, larger firms have a much greater advantage when only the lowest bid is considered for a contract.

Sen. Thayer asked Mr. Carpita how long ago the $5,000 limit was put into the law and wondered if a $10,000 limit would be more realistic. Mr. Carpita replied that he wasn't sure how long ago it was, but he would have no problem with raising it to $10,000. Mr. Hanson noted that it is not in the law now, but would be with passage of HB 310.

Sen. Williams wanted to know if someone would be cut out by the establishment of this proceedure and how it might affect rural areas. Mr. Hanson answered that anyone who is listed by the state would be able to be considered. If a building board or a school wanted a listed professional, they could refer to this list. The school districts were in favor of the expansion of the field from which to choose.

Chairman Kolstad asked what would constitute an emergency and Mr. Hanson answered something such as if the state had a boiler stack which had to be fixed immediately, or such as when the explosion happened at the state prison.

Sen. Walker wanted to know what the protection would be if something went wrong in one of those emergency cases with the $5,000 limit, and Mr. Hanson replied that there would be the usual protection of the law and the prosecution of that law.

Sen. Weeding asked how the new requirements would filter down to the school levels and how they would be made aware of the new process. Mr. Hanson explained that the schools may already have a selection process, but the intent is to

prepare something and pass that out to all entities so that they will know.

Sen. Williams wanted to know how the selections would be made under the $5,000 (or $10,000) limit situation and Mr. Cummings explained that the bill states that an agency MAY encourage firms to submit annually a statement of qualifications and performance data. Those firms will then be evaluated together with other firms interested in submitting bids regarding the proposed project. The agency shall then select, based on criteria established under agency procedures and guidelines and the law, the firm considered most qualified to provide the services required.

The hearing was closed on House Bill No. 310.

EXECUTIVE ACTION ON HOUSE BILL NO. 68: Due to numerous problems with this bill it was brought back into the committee for further consideration. A MOTION by Sen. Cecil Weeding that HB 68 BE RECONSIDERED was Seconded by Sen. Darryl Meyer and PASSED UNANIMOUSLY.

A MOTION by Sen. Darryl Meyer that the AMENDMENT TO HB 68 BE ADOPTED was Seconded by Sen. Weeding and PASSED UNANIMOUSLY.

Sen. Gene Thayer moved that THE STATEMENT OF INTENT FOR HB 68 BE ADOPTED. The Motion was Seconded by Sen. Paul Boylan and PASSED UNANIMOUSLY.

Sen. Cecil Weeding made the MOTION that HB 68 BE CONCURRED IN AS AMENDED. The MOTION was Seconded by Sen. Tom Hager and PASSED UNANIMOUSLY.

The next meeting of the committee was announced by Chairman Kolstad to be held on Wednesday, February 11, 1987.

All business being completed for the day, the meeting was adjourned by Chairman Kolstad at 11:57 a.m.

Allen C. Kolstad

SENATOR ALLEN C. KOLSTAD, CHAIRMAN

cl

ROLL CALL

Business & Industry COMMITTEE

50th LEGISLATIVE SESSION -- 1987

Date 2/10/87

NAME	PRESENT	ABSENT	EXCUSED
ALLEN C. KOLSTAD, CHAIRMAN	✓		
TED NEUMAN, VICE CHAIRMAN	✓		
PAUL BOYLAN	✓		
TOM HAGER	✓		
HARRY H. McLANE	✓		
DARRYL MEYER	✓		
GENE THAYER	✓		
MIKE WALKER	✓		
CECIL WEEDING	✓		
BOB WILLIAMS	✓		

Each day attach to minutes.

DATE 2/10/87

COMMITTEE ON Business & Industry

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One: Support	Oppose
James B. Carroll	Consulting Engineers Council of Montana	HB 310	X	
Laura Smith	Bozeman Daily Chronicle	HB 80	X	
Jim Richard	Helena Independent Record	HB 80	X	
Sandra Grimes	Missoula - Missoulian	HB80	X	
Les Loble	Lee Enterprises, Inc	HB80	X	
Steve Studt	Great Falls Tribune	HB80	X	
Gary Reece	MT. Press Assn.	"	"	
Dave Byerly	Lewiston News-Magn	HB80	✓	
Mary Walker	Lee Montanan	HB80	✓	
Norm Hess	Workers' Comp	HB80		✓
Phil Porini	American Society of Civil Engrs.	HB310	✓	
John Morrison Jr.	Consulting Engineers Council of MT	HB310	✓	
Wayne Ruhle	Billings Gazette	HB80	✓	
Mary Frances Johnson	Billings Gazette	HB80	✓	
Dennis Kraft	Billings Gazette	HB70	✓	
Jim Cummings	Cons. Engr. Coun. of MT	HB310	✓	
Wynette Simons	Montana Chapter, AIA	HB310	✓	
[illegible]	MT. Tech. Council	HB-310	✓	

(Please leave prepared statement with S

NAME: James B. Carpita DATE: 2/10/87

ADDRESS: 715 Honey House, Corvallis, MT

PHONE: 961-3925

SENATE BUSINESS & INDUSTRY
EXHIBIT NO. 5
DATE 2/10/87
BILL NO. HB 310

REPRESENTING WHOM? Consulting Engineers Council of Montana

APPEARING ON WHICH PROPOSAL: HB 310

DO YOU: SUPPORT? X AMEND? _____ OPPOSE? _____

COMMENTS: See attached Testimony submitted to committee

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

SENATE BUSINESS & INDUSTRY
EXHIBIT NO. 5
DATE 2/10/87
BILL NO. HB 310

February 10, 1987

HOUSE BILL NO. 310

PRESENTED TO THE SENATE BUSINESS AND INDUSTRY COMMITTEE
BY
JAMES B. CARPITA, P.E.,
REPRESENTING THE
CONSULTING ENGINEERS COUNCIL OF MONTANA

House Bill No. 310 will provide all levels of government with a standard selection procedure for awarding architectural, engineering, and land surveying service contracts based upon qualifications and competence of the professionals involved.

The selection procedure outlined in the bill is based upon the American Bar Association's "Model Procurement Code for State and Local Governments". The State of Montana has already adopted a major portion of the ABA's model code. As stated in the model code, the primary reasons for using the qualification-based, negotiated selection procedure is the "lack of definite scope of work for such services at the time the selection is made and the importance of selecting the best qualified firm". The attached pamphlet "*Procurement of Professional Design Services*" was prepared by the Interprofessional Council on Environmental Design to further explain the ABA model code and the advantages of using negotiated procurement procedures based upon qualifications.

The 48th Legislature authorized the formation of a State Building Construction Advisory Council. This council was established to determine if the existing construction policies and procedures effectively satisfy the needs of the State. In reviewing the design professional selection procedures, the Council unanimously voted to continue the Department of

Administration's qualification-based selection procedure. Similarly, the Department of Natural Resources and Conservation has reprinted the attached booklet "*Model Competitive Procurement Procedure*" for distribution to local government, public service and institutional entities.

Prior to this 50th Legislative Session, the Consulting Engineers Council of Montana distributed to each Representative and Senator a Summary of Points supporting qualification-based procurement of professional services. That summary noted that 29 other states have adopted similar procurement legislation. (See attached map). In fact, the State of Montana does have laws on the books that do exempt architects, engineers and land surveyors from bidding for State contracts. Governor Schwinden has issued a Management Memorandum to all State Department Heads which requires the use of qualification-based selection procedures. In addition, Montana's school districts are also required to use this type of procurement procedure for architectural services. Copies of the applicable sections of Montana laws are attached for your ready reference.

In discussing House Bill No. 310 with the various Associations representing the public section contracting profession services, certain amendments were discussed. House Bill No. 310, as amended by the House, was reviewed by Mr. Bruce Moerer with the Montana School Board Association. The MSBA found no objections to this Bill as amended.

Further, Mr. Gordon Morris with the Montana Association of Counties has reviewed the amended Bill and supports its passage.

SENATE BUSINESS & INDUSTRY
EXHIBIT NO. 5
DATE 2-10-87
BILL NO. H.B. 310

The Consulting Engineers Council of Montana urges this Committee to recommend passage of HB310 as amended.

\JC\HB310

(2) The funds so accumulated shall be held and dedicated for the purpose of constructing capitol buildings or additions thereto in accordance with the provisions of section 12 of The Enabling Act.

History: (1)En. Sec. 1, Ch. 120, L. 1943; amd. Sec. 49, Ch. 147, L. 1963; Sec. 78-501, R.C.M. 1947; (2)En. Sec. 3, Ch. 120, L. 1943; amd. Sec. 50, Ch. 147, L. 1963; Sec. 78-503, R.C.M. 1947; R.C.M. 1947, 78-501, 78-503; amd. Sec. 2, Ch. 277, L. 1983.

Compiler's Comments

1983 Amendment: In (1), substituted "a capital projects fund" for "the federal and private revenue fund".

Cross-References

Deposit of funds in the hands of the State Treasurer, 17-6-101.

18-2-108. Compliance with state laws and regulations. All buildings built or leased or purchased under this title must comply with all laws, safety codes, and rules of the state of Montana.

History: En. 82-3315.8 by Sec. 8, Ch. 242, L. 1974; R.C.M. 1947, 82-3315.8.

Cross-References

Building construction standards, Title 50, ch. 60.

SENATE BUSINESS & INDUSTRY
EXHIBIT NO. 5
DATE 2-10-87
BILL NO. H.B 310

18-2-109 and 18-2-110 reserved.

18-2-111. Policy regarding practice of architecture — preparation of working drawings by department limited. (1) It is the policy of the state not to engage in the practice of architecture; however, this policy shall not be construed as prohibiting the department of administration from:

(a) engaging in preplanning functions necessary to prepare a building program for presentation to the legislature;

(b) supervising construction as provided in 18-2-105(6); or

(c) preparing working drawings for minor projects.

(2) The department of administration is expressly prohibited from preparing working drawings for the construction of a building, with the exception of repair or maintenance projects, when the total cost of the construction will exceed $25,000.

History: En. Sec. 20, Ch. 271, L. 1963; amd. Sec. 1, Ch. 371, L. 1977; R.C.M. 1947, 82-3320; amd. Sec. 3, Ch. 491, L. 1983.

Compiler's Comments

1983 Amendment: In (2), inserted "with the exception of repair or maintenance projects".

Cross-References

Preparation of building programs and submission to Department of Administration, 17-7-202.
Architecture, Title 37, ch. 65.

18-2-112. Appointment of architects and consulting engineers. The department of administration shall appoint any architect or consulting engineer retained for work on any building to be constructed, remodeled, or renovated by the state of Montana, its boards, institutions, and agencies from a list of three architects or consulting engineers proposed by the state board, institution, or agency where the work is to be done. Such appointment shall be subject to the approval of the state board of examiners. The department need not appoint an architect or consulting engineer for repair or maintenance projects.

History: En. Sec. 19, Ch. 271, L. 1963; amd. Sec. 1, Ch. 231, L. 1965; amd. Sec. 1, Ch. 83, L. 1973; amd. Sec. 98, Ch. 326, L. 1974; R.C.M. 1947, 82-3319; amd. Sec. 4, Ch. 491, L. 1983.

Compiler's Comments

1983 Amendment: Inserted last sentence.

Cross-References

Appointment of architect, 18-3-102.

SENATE BUSINESS & INDUSTRY
EXHIBIT NO. 5
DATE 2-10-87
H.B. 310

proj... rules ...32
dep...
ca...
a... ...tana property for

1. ...lease with option to purchase. When authorized by a vote of ... of the members of each house of the legislature, the department of ...nistration shall have the authority, as part of the long-range building p...gram, to enter into a rental contract which provides an option to purchase a building to be used by the state or any department of state government.

History: En. 82-3315.1 by Sec. 1, Ch. 242, L. 1974; R.C.M. 1947, 82-3315.1.

Cross-References
Long-range building program bonds, Title 17, ch. 5, part 4.
General powers and duties of Department of Administration, 18-2-105.

18-3-102. Appointment of architect. The department of administration may appoint an architect to draw plans and specifications for the construction of a building authorized by this chapter, subject to the approval of the board of examiners.

History: En. 82-3315.4 by Sec. 4, Ch. 242, L. 1974; R.C.M. 1947, 82-3315.4.

Cross-References
Appointment of architects and consulting engineers, 18-2-112.

18-3-103. Awarding contract. In awarding a contract, the department of administration shall follow the same procedures that are required for the award of a contract to construct a state-owned building. The department shall have the authority to reject any and all bids.

History: En. 82-3315.7 by Sec. 7, Ch. 242, L. 1974; R.C.M. 1947, 82-3315.7.

Cross-References
Construction contracts — general provisions, Title 18, ch. 2, part 1.
Bids required — advertising, 18-2-301.

18-3-104. Contract provisions. The rental contract shall be for a period not to exceed 20 years with an option to purchase at the end of specific periods determined by the department of administration and clearly defined in the contract for each individual project. The option to purchase at the end of the contract period shall not exceed the amount of $50,000. The contract shall provide for the appointment of a trustee with sufficient powers to protect the state's interest in the building and any property conveyed as a building site. The contract shall contain such other provisions as determined by the department of administration to be necessary.

History: En. 82-3315.5 by Sec. 5, Ch. 242, L. 1974; R.C.M. 1947, 82-3315.5.

Cross-References
Contracts — formation and interpretation, Title 28, ch. 2 and 3.
Trustees' Powers Act, Title 72, ch. 21.

18-3-105. Location of building. The building shall be located as determined by the terms of the call for bids. If any such contract requires the sale

18-8-104. Use and selection of private consultants.
18-8-105. Solicitation of bids.
18-8-106. Restriction on former employees.
18-8-107 through 18-8-110 reserved.
18-8-111. Information relating to consultant studies.
18-8-112. Contract in violation void.

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Part 1
Consultants

18-8-101. Purpose. (1) It is the intent of the legislature that this part be interpreted in a manner that assures the greatest fair competition in the selection by state agencies of private consultants under contracts covered by this part and that assures that all potential providers of consulting services are afforded notice of the need for and opportunity to provide the services.

(2) This part is not intended to discourage the use by state agencies of private consultants if their use may reasonably be expected to result in a more efficient and less costly operation or project. This part is not intended to prohibit the letting of a sole-source contract for consulting services if no proposal is received from a competent, knowledgeable, and qualified private consultant at a reasonable fee, after the procedures set forth in this part have been followed.

History: En. Sec. 1, Ch. 547, L. 1981.

18-8-102. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Consulting service" means the human service of studying or advising an agency under an independent contract. However, the term is limited to professional consulting service work provided to an agency under an independent contract with a private consultant, but does not include the making of periodic or routine reports or the collection of routine data necessary to the functioning of a state agency or its programs or necessary for the proper monitoring of private providers of human services regulated by a state agency. The term includes only services for which payment is made from funds:

(a) that are appropriated by the legislature;

(b) that are generated by statutory functions of the agency; or

(c) that are received by the state from the federal government and that are awarded to the state without requiring the state to request the funds through a grant program.

(2) "Private consultant" means an entity that performs consulting services other than a state agency or employee.

(3) "State agency" means any state department, commission, board, office, institution, facility, or other agency, including a university system or an institution of higher education.

History: En. Sec. 2, Ch. 547, L. 1981.

18-8-103. Exemptions. This part does not apply to employment of:

(1) registered professional engineers, surveyors, real estate appraisers, or registered architects;

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(2) physicians, dentists, or other medical, dental, or health care providers;

(3) expert witnesses hired for use in litigation, hearings officers hired in rulemaking and contested case proceedings under the Montana Administrative Procedure Act, or attorneys as specified by executive order of the governor;

(4) consulting actuaries to the public retirement boards.

History: En. Sec. 3, Ch. 547, L. 1981; amd. Sec. 1, Ch. 215, L. 1983; amd. Sec. 1, Ch. 21, L. 1985.

Compiler's Comments

1985 Amendment: Inserted (4).

1983 Amendment: In (1), after "architects" deleted "concerned with the study, design, or construction of state facilities or highways".

Cross-References

Employment of actuary — biennial investigation and valuation, 19-3-305.

Teachers' retirement — actuary, 19-4-203.

18-8-104. Use and selection of private consultants. (1) A state agency may use a private consultant only if:

(a) there is a substantial need for the consulting services; and

(b) the state agency cannot adequately perform the consulting services with its own personnel.

(2) In selecting a private consultant, a state agency shall:

(a) base its choice on demonstrated competence, knowledge, and qualifications and on the reasonableness of the proposed fee for the services; and

(b) when other considerations are equal, give a preference to a private consultant who is a bona fide resident of Montana as defined in 18-2-401 and whose principal place of business is within the state or who will manage the consulting engagement wholly from one of its offices within the state.

History: En. Sec. 4, Ch. 547, L. 1981.

18-8-105. Solicitation of bids. (1) In order to contract with a private consultant, a state agency shall establish a bid list in its central office. Any private consultant who desires to submit bids to that agency to provide consulting services may request in writing the agency place him on the agency's bid list.

(2) Whenever it is reasonably foreseeable that a proposed contract for private consultant services will exceed $5,000, the state agency shall notify all private consultants who have requested to be placed on the agency's bid list. The notice shall contain the following:

(a) a notice of invitation for offers of consulting services;

(b) the name and address of the person within the agency to be contacted by a private consultant wishing to make an offer;

(c) the closing date for receipt of offers of consulting services;

(d) the procedures and specifications upon which the agency will award the contract for consulting services; and

(e) any other information that the agency believes pertinent.

(3) In addition to the notification required in subsection (2), the state agency, in its discretion, may solicit bids for consultant services by advertisement or other means.

(4) An agency need not follow the provisions of this section in bona fide emergency situations.

History: En. Sec. 6, Ch. 547, L. 1981; amd. Sec. 1, Ch. 509, L. 1983.

Compiler's Comments

1983 Amendment: At end of first sentence in (1), following "central office" deleted "or in another appropriate division or unit of the agency".

any contract for the construction of school facilities until the plans and specifications for such construction have been approved under the provisions of 20-6-622.

(2) Any contractor, architect, trustee, or any other person, firm, or corporation who shall violate the provisions of 20-6-622, this section, or any regulation promulgated by the state board of health and environmental sciences or the state fire marshal shall be deemed guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not less than $100 or more than $500.

History: En. 75-8208 by Sec. 480, Ch. 5, L. 1971; R.C.M. 1947, 75-8208.

Cross-References

Lapse of budgeted appropriations and provision for unpaid claims, 20-9-209.

Fire safety in public buildings, Title 50, ch. 61.

20-6-625. Authorization to lease buildings or land for school purposes. The trustees of any district may lease buildings or land suitable for school purposes when it is within the best interests of the district to lease such building or land from the county, municipality, another district, or any person. The lease may be for a term of not more than 3 years unless prior approval of the qualified electors of the district is obtained in the manner prescribed by law for school elections, in which case the lease may be for a term of not more than 99 years. Whenever the lease is for a period of time that is longer than the current school fiscal year, the lease requirements for the succeeding school fiscal years shall be an obligation of the final budgets for such years.

History: En. 75-8209 by Sec. 481, Ch. 5, L. 1971; amd. Sec. 2, Ch. 424, L. 1977; R.C.M. 1947, 75-8209.

Cross-References

School fiscal year, 20-1-301.

Lease or purchase of state property for post-secondary vocational-technical center purposes, 20-7-314.

School elections, Title 20, ch. 20.

20-6-626 through 20-6-630 reserved.

20-6-631. When contracts for architectural services required. Whenever the estimated cost of any building, furnishing, repairing, or other work for the benefit of a school district exceeds $50,000 and requires architectural services, such services shall be by contract.

History: En. 75-6815 by Sec. 1, Ch. 370, L. 1975; R.C.M. 1947, 75-6815.

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20-6-632. Repealed. Sec. 1, Ch. 422, L. 1979.

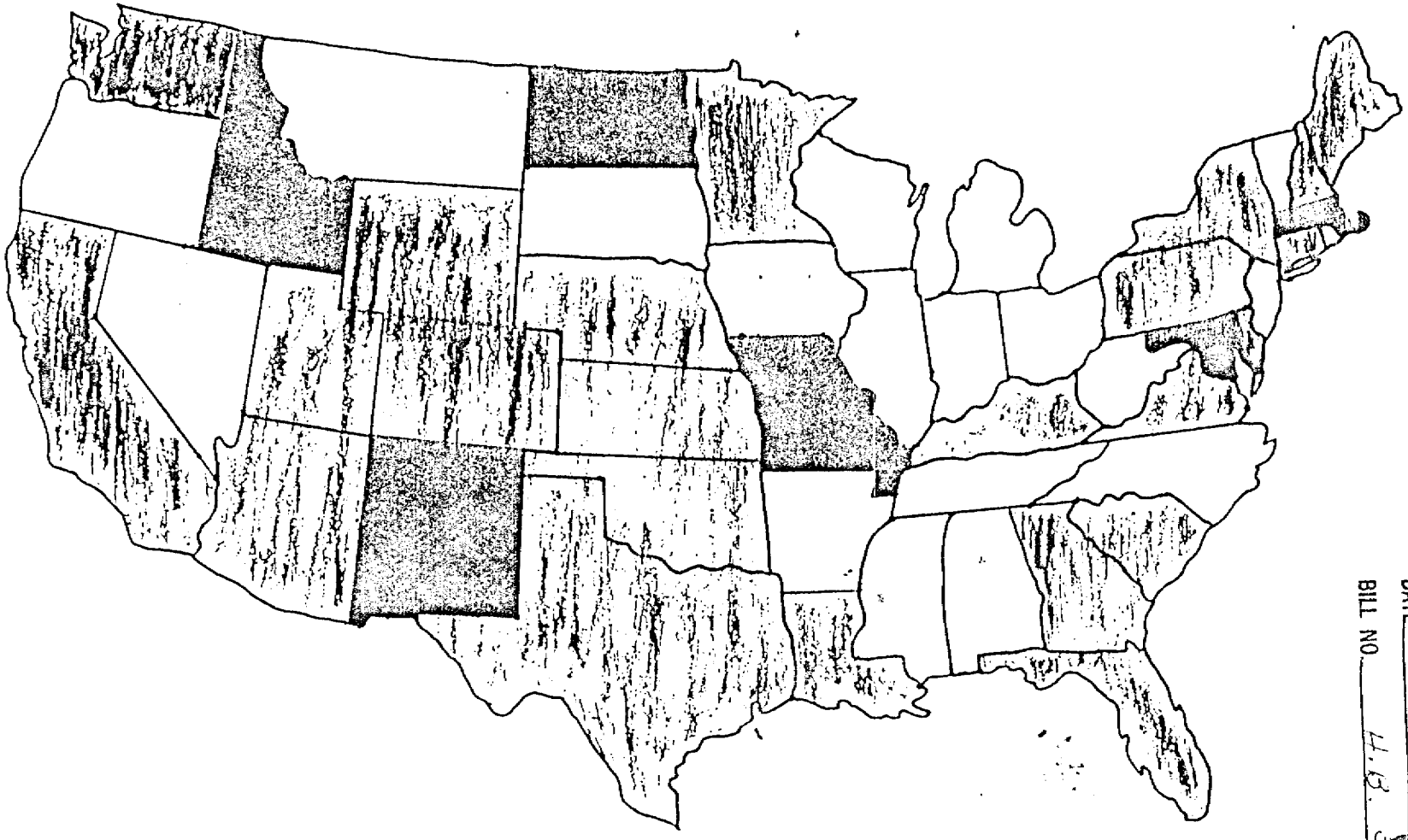
History: En. 75-6816 by Sec. 2, Ch. 370, L. 1975; R.C.M. 1947, 75-6816.

20-6-633. Negotiation of fees. After selecting a firm, the trustees shall negotiate with the selected firm a fair and reasonable fee for the architectural services as described by the school district's scope of the work. In the event the trustees and the firm are unable to negotiate a fair and reasonable fee, the trustees may select another firm, provided the trustees again give reasonable public notice of their selection.

History: En. 75-6817 by Sec. 3, Ch. 370, L. 1975; R.C.M. 1947, 75-6817.

States passing qualifications-based selection laws since June 1982.

States with qualifications-based selection laws adopted prior to June 1982.



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MODEL COMPETITIVE

PROCUREMENT PROCEDURE

SENATE BUSINESS & INDUSTRY

EXHIBIT NO. 6

DATE 2/10/87

BILL NO. HB 310

For Professional
Engineering and
Land Surveying
Services

For Local Government,
Public Service and
Institutional Entities

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Capitol Station
Helena, MT 59620

Montana Department of
Natural Resources and Conservation

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A Memo from:

National Society of Professional Engineers
Professional Engineers in Private Practice

The Model Competitive Procurement Procedure for Professional Engineering and Land Surveying Services was developed by the Professional Engineers in Private Practice division of the National Society of Professional Engineers.

It is provided as a tool to assist, particularly the smaller municipalities, other public entities (i.e., schools, colleges and universities, health care institutions, utility and special purpose districts), and institutions whose need for engineering and/or land surveying services is infrequent and whose experience is limited.

The objective is to provide a system which is relatively simple and at the same time lends itself to the procurement of qualified engineering and/or land surveying services.

The Professional Engineers in Private Practice hopes it is a useful document and enables its users to procure quality services with a minimum of difficulty.

I. Purpose

Satisfactory relationships between a client and its consulting engineer must be based upon confidence and trust. The local client/owner must have confidence in the qualifications and character of its consulting engineer. Each party must trust the other to be fair and reasonable in all relationships.

Many organizations--especially small communities without engineering departments--have built this foundation of confidence and trust through a continuing relationship with a consulting engineer. The continuing relationship often brings additional benefits, such as a well-kept engineering record system and the continuity of engineering service.

Circumstances occasionally arise, however, when an institution decides to procure engineering services for a specific project on a competitive basis. This decision may be the choice of the local officials, or it may be necessary because of Federal requirements on federally-funded projects, or it may be necessary because of the special technical requirements of the project.

When officials decide to procure engineering services for a project on a competitive basis, it is highly important that they use a procurement procedure which fosters the confidence in qualifications, character and mutual trust which are so important for a satisfactory client/engineer and/or land surveyor relationship. The engineer or land surveyor is engaged to represent the client's interests and is therefore in a different relationship with the client from that normally existing in the buyer-seller situation. For these reasons, qualifications, competency and availability of the most qualified firms are considered initially, then price is negotiated later.

It is considered more desirable to make the qualification selection first, then discuss the price because both parties need to review in detail what is involved in the work. Without some detailed discussions, the client often has one scope of work in mind and the consultant may have evaluated the project from an entirely different point of view. Once the parameters have been fully understood, the engineer or land surveyor proposes a fee for the work. The client then makes his own evaluation and judgment as to the reasonableness of the fee.

If the fee is fair and reasonable, award is made without requesting or considering fee proposals of other competing firms. If the fee cannot be negotiated to the satisfaction of the client, negotiations with the next most qualified firm are initiated. Thus, price clearly is an important factor in the award of the engineer or land surveying services contract under this procedure. The principal difference between the recommended procedure for engineering and land surveying selection and the procedure used in most other competitive source selection is the point at which price is considered.

The Private Practice Division of the National Society of Professional Engineers has developed this Model Competitive Procurement Procedure as aid to institutions and units of local government not accustomed to routinely selecting professional services. It is believed that this procedure will meet the requirements of federal agencies while fostering an atmosphere of confidence and trust with the consulting engineer that is selected. It is also intended to optimize the purchasing value of public funds by suggesting procedures which are designed to assure employment of the best qualified professional engineers or land surveyors.

The proposed procedure incorporates many of the features of the Brooks Bill (Public Law 92-582) which is the basis for Federal procurement of engineering services, and of the Model Procurement Code developed by the American Bar Association.

II. Format

This procurement procedure consists of four major elements: public notice; submittals; review of submittals; and negotiation. Each element is discussed in some detail in the following paragraphs:

1. Public Notice: The public notice is a very important element of the procurement procedure.

   Interested consultants are informed, through some form of public notice, of the intent to secure professional engineering and/or surveying services.

   The public notice should be concise and as brief as possible, containing as a minimum the following information:

   a. Name and address of entity requiring services and the name of the designated contact person.

   b. A description of the project and the nature of professional services required. Include the project location.

   c. Project budget or construction costs estimate and time schedule.

   d. Any special requirement pertinent to the nature of the proposed project.

   e. A deadline date for receipt of submittals from interested professional engineers or land surveyors.

   It is suggested that the public notice be published in the official journal (if one exists) of the requesting entity, posted on appropriate bulletin boards or by the use of the local area's normal means of publicizing such notices. All notices should appear three to four weeks in advance of the established date for receipt of submittals. It is also suggested the public notice be published in at least one statewide publication.

2. Submittals: All interested professional engineers or land surveyors responding to the public notice should submit a completed U.S. Government Standard Form (SF) 255* to the requesting entity, or if they do not have such a form, they should provide the requested information in a convenient manner.

   In addition to the required information in Items 1 through 11, all responsive submittals shall also include the following information under Item 10, or on supplemental sheets thereto, of the SF 255:

   a. A statement of the technical approach to be utilized in performing the project.

   b. A proposed schedule for accomplishment.

   c. Facilities and equipment available for the project.

   d. Banking reference(s).

   e. Any other supporting material as may be applicable.

3. Review of Submittals: The procuring agency should establish a review panel to receive and review submittals for the proposed work. The review panel should meet promptly after the deadline date, and should review and evaluate all submittals received.

*Sample copies available from NSPE/PEPP. Pads available from the Office of Design and Construction, Design Management Division - PCB, Public Buildings Service, General Services Administration, 18th & F Streets, Washington, D.C. 20405, Attn: Bernard Adamec.

A "short list" comprised of at least three, but not more than five submittals should be established and ranked in order of preference. In establishing and ranking this short list, the review panel should consider completeness of the forms and applicability of experience and qualifications related to the required services. The panel is encouraged to check references of the firms by phone or letter.

The review panel may desire to further examine the experience and qualifications of the "short listed" firms through personal interviews. In such case, the firms identified by the ranked submittals should be notified in writing and should be invited to scheduled interviews. Adequate time should be allowed for this interview so that a firm's qualifications can be carefully discussed and the engineers can describe how they would plan to organize their team for the project.

After the interviews, the review panel should reconvene and create a new ranking of the firms based on the evaluation of references and findings of the interviews. The top-ranked firm should be invited to negotiate terms and conditions of the contract for professional services.

4. Negotiation: The procuring body should undertake negotiations with the top-ranked firm as soon as possible after completion of the interview process.

In the event the procuring body is unable to negotiate a suitable contract with the first-ranked firm, negotiations should be terminated with that firm, and then initiated with the second-ranked firm. This process should be continued until suitable contractural arrangements with a firm have been satisfactorily consummated. All unsuccessful firms should be so advised by letter.

National Society of Professional Engineers (NSPE) contract documents are recommended for joint use by the client and the selected firm. These documents have been carefully prepared to equally protect the client and the consultant. They have stood the test of time and are widely accepted as the best for the industry.

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Procurement of Professional Design Services

Interprofessional Council on Environmental Design
1985

The Interprofessional Council on Environmental Design is a group of organizations whose members are engaged in the professional design of the built environment. As architects, engineers, landscape architects and city planners, these professionals frequently collaborate on planning and design projects. ICED was established in 1963 to reflect that collaboration.

This brochure is available from any of the ICED organizations. (See inside back cover.)

INTRODUCTION

When local government officials undertake a public improvement project—whether it's erecting a building, widening a highway, planning a new housing or commercial development, creating a city park or any number of other public improvements—the selection of the consulting firm is one of the most important choices to be made. That's because the consulting firm's performance, frequently in conjunction with other professional firms, determines the entire course of the project—feasibility, planning, location, design, plans and specifications, construction costs and the operating and maintenance costs over the facility's lifetime.

Consulting firms are hired long before ground is broken and construction begins on a project. These professionals are trained to translate their client's needs and concepts into the hard reality of detailed project plans.

Yet despite the importance of the contribution these consultants make to the success of a project, there are still many misconceptions about the best way to select such a firm. We hope this booklet will help clear up some of these misconceptions.

> The word "consulting" as used in this document refers to architectural, engineering, landscape architectural, planning and land surveying services.

Questions and Answers About The Selection of Consulting Planning/Design Firms

Q. What are the services consulting planning/design firms may provide?

A. The basic types of services available are planning, feasibility, preliminary and final design, bid evaluation, construction observation and advisory consultation on a continuing basis.

Q. How are consulting firms hired?

A. The general method of hiring consulting firms is through a process known as negotiated pro-

curement of professional services. There are six major elements in this procedure: public notice, submittals, review of submittals; ranking respondents, negotiation, and engagement.

Q. How does negotiated procurement work?

A. The contracting agency announces that it is in need of the services of a professional planning/design services firm for a particular project, and invites interested firms to submit information about their qualifications, their experience, and a brief description of the technical approach they would follow. The agency then reviews and evaluates the submissions and selects a "short list" of three to five firms. Personal interviews are usually conducted with these firms to discuss each firm's qualifications and overall approach to the project.

Once these interviews are completed, the agency ranks the firms. The top-ranked firm is then invited to begin formal negotiations with the agency. This includes a discussion of the client's concepts and goals, the alternatives that might be followed, the general approach to the scope of work and, finally, the firm's compensation for the project.

Q. What criteria should be considered in ranking consulting firms?

A. Each project may require special criteria in determining the relative capabilities of competing consulting firms. Several organizations have published suggested qualification standards (see bibliography). The elements most commonly considered in ranking consultants are:

1. specialized experience for the work required
2. quality and performance of work on similar project for other clients
3. record of timely completion on other assignments
4. current workload and size of staff
5. credit rating and financial stability
6. reputation among fellow professionals
7. awards, honors or other recognition
8. special resources or capabilities (e.g, CADD system, in-house laboratory) pertinent to the assignment

9. anticipated rapport and compatibility with the client.

Q. What does the term "scope of work" include?

A. The scope of work defines the services to be provided to execute the project. The scope often includes an evaluation of alternate solutions or approaches to the project.

Q. What happens if there is a lack of agreement during negotiations?

A. If for any reason agreement on the scope of work and compensation cannot be reached, then negotiations with the top-ranked firm are formally terminated. The client then enters into negotiations with the second-ranked firm. The process is repeated until the parties reach agreement. Negotiations usually succeed with the first or second ranked firm, however.

Q. Does this process inhibit competition?

A. Not at all. It elevates competition for consulting services to its proper plane—qualifications, competence, track record and availability.

Q. Isn't price a factor?

A. Certainly. But not until the parties agree on the scope of work. Of primary importance is the technical ability that will turn the client's vision into an efficient, effective and economical reality.

Q. What types of firms are selected through negotiated procurement?

A. All consulting firms should be retained through negotiated procurement. This includes engineering, architectural, land surveying, planning and landscape architectural firms. Most projects require two or more of these services. Firms frequently offer combined services. For example, many provide both architectural and engineering services, hence the term A/E. Many civil engineering firms also provide land surveying services and it's not uncommon for firms to offer three or more of the services including planning. Whether a client chooses services in combination from one firm, or from separate special-

ized firms, negotiated procurement will fit the client's judgment of who will best provide technical services.

Q. Why does the process for the selection of a firm to construct a project differ from that used in the selection of a firm to plan or design the same project?

A. A construction contract can be awarded on the basis of price because the project is defined and described in thorough detail through plans and specifications. These cover all elements including the type and amount of construction materials required and the level and volume of labor—skilled and unskilled—necessary to complete the project. On the other hand, the consultant is retained to turn a client's general objective into a specific project plan or a set of construction plans and specifications. The consultant takes an idea and gives it definition. The contractor takes that definition and turns it into a physical reality.

Q. Are there any laws governing the procurement of professional design services?

A. Yes. In 1972, the U.S. Congress enacted the Brooks Act, Public Law 92-582 (40 U.S.C. 541), which prescribes the use of negotiated procurement for federal civilian agency projects. Similar legislation applicable to military agencies was enacted in 1982. A number of states and many localities have enacted similar legislation. The American Bar Association, in its Model Procurement Code for State and Local Governments, recommends that professional design firms be selected through negotiated procurement.

However, a few cities and towns in the U.S. have enacted laws mandating that professional design services be obtained on a basis which includes price competition.

Q. Is the professional selection and negotiation procedure consistent with competitive procedures?

A. Yes, the generally accepted concept that public procurement should be on a competitive basis

is met by the professional selection and negotiation procedure. It is highly competitive among the firms seeking the assignment and compensation is negotiated when competing firms have not yet been precluded from selection. In the Competition in Contracting Act of 1984, which requires executive agencies to enter into contracts pursuant to full and open competition, the procurement of architectural or engineering services under the Brooks Act is included as a competitive procedure.

Q. Why is negotiated procurement the preferred method?

A. The American Bar Association's Model Procurement Code for State and Local Government says:

"The principal reasons supporting this selection procedure for architect-engineer and land surveying services are the lack of a definitive scope of work for such services at the time the selection is made and the importance of selecting the best qualified firm. In general, the architect-engineer or land surveyor is engaged to represent the (State's) interests and is, therefore, in a different relationship with the (State) from that normally existing in a buyer-seller situation. For these reasons, the qualifications, competence, and availability of the three most qualified architect-engineer or land surveying firms is considered initially, and price negotiated later."

Q. What has been the experience in jurisdictions where price proposals are required?

A. Maryland is the only state which has had a law requiring price as a selection factor. After experience with the law over a ten-year period, that law has been substantially amended to delete price as a selection factor. As of April 1, 1986 all design procurements for the Department of Transportation will be on a professional selection and negotiation basis. This applies also to building projects administered by the General Services Administration except for projects with an estimated fee under $100,000. (The exception is provided for a transition period. The exception is expected to be rescinded at a later

date.) The basis for the change in the law was a demonstration that the price requirement increased total project costs, including particularly the cost of construction delays and the administrative cost required to maintain the old system.

Several of that state's procurements illustrate the difficulty in having meaningful price competitions when the product or service being procured is heavily dependent upon ingenuity, creativity and past experience. In each of the following actual cases, procurement officers prepared what they felt was a comprehensive scope of services and, in some instances, even held pre-proposal briefings. Nevertheless, the range of prices in each case indicates how differently each firm interpreted the intent, scope and degree of difficulty of services being sought.

State of Maryland Highway Project Four Bids		State of Maryland Wastewater Treatment Plant Four Bids	
Firm A	$ 492,079	Firm A	$ 54,100
Firm B	786,327	Firm B	124,800
Firm C	1,365,962	Firm C	220,000
Firm D	1,999,539	Firm D	265,000

These real-life cases substantiate the fears expressed by Chairman Brooks of the Committee on Government Operation.

"If fee is injected directly into the selection process, either through direct bidding or routine competitive negotiation, less competent members of the design professions, or those willing to provide lower quality services, are given an advantage in obtaining the contract. They can offer to perform the work at a lower fee, thereby obtaining a competitive advantage, and then, having won the contract, give a lower quality performance, or exert a lower level of effort in order to protect their profit margin."

Q. Does negotiated procurement increase costs to the owner?

A. No. Design and engineering costs—whether obtained through negotiated procurement or through price competition—are generally a very

small percentage of total construction costs. A careful and detailed negotiation will bring out the most cost-effective requirements for a successful project through consideration of research for the best type of design, of alternative methods and materials, of life-cycle cost factors and the costs of operation and maintenance.

It is a poor trade-off to save on the design work that should determine how to get economical construction.

Q. What about costs over the entire life of a project?

A. Skimping on design effort can be even more costly when one considers the life span of a construction project.

The life span of a project is generally about 40 years. Negotiated planning/design fees are usually less than one percent of a project's total life-cycle cost. Construction costs range from seven to 10 percent of a project's total life-cycle costs. The other 90 percent is in maintenance and operating costs. But the consultant's expertise and time spent in examining alternatives, for example, in the use of energy, can have a dramatic effect on lowering maintenance and operating costs year after year.

Q. Does the professional selection and negotiation method lead to political favoritism?

A. No. The federal law and similar state laws all require that there be public announcement of public project requirements so that all firms may submit their qualifications and be considered on their merits. The public record is open for public scrutiny at all times during the selection process. Attempts to introduce political favoritism into any process of selecting professional firms should be vigorously prosecuted by public authorities with the support of the design professions.

Q. Will the negotiated procurement process eliminate all problems in consultant relations during project execution?

A. No. However, it will reduce the existence and impact of such problems because the parties

will have a thorough understanding of the responsibilities and obligations of each.

Q. Where can I get more information?

A. Several organizations including ICED societies have published statements on the subject of engaging professional design/planning services. They provide discussions that are specific to each field. See the following bibliography. In your own area, there are planning, architectural, landscape architectural, engineering and surveying firms listed in the telephone directory as well as local professional societies or chapters. They have local knowledge and resources at hand to offer advice.

Bibliography

"ABA Model Procurement Code for State and Local Governments" February 1979; 75 pages

$3.50 per copy; and

"ABA Model Procurement Ordinance for Local Governments" (No. 700) August, 1982; 26 pages

$3.00 per copy plus $1.00 handling from:
American Bar Association
Order Fulfillment
750 Lakeshore Drive
Chicago, Illinois 60611

"A Guide to Procurement of Architectural and Engineering Services" 1984; 62 pages

$5.00 per copy; and

"The Bridge Is Ours—A Guide to the Procurement of Engineering Services" 1984; 12 pages

One copy free from:
American Consulting Engineers Council
1015 Fifteenth Street, N.W.
Washington, D.C. 20005

"Selecting Architects for Public Projects" 16 pages

One copy free from:
American Institute of Architects
1735 New York Avenue, N.W.
Washington, D.C. 20006

"Selecting a Professional Planning Consultant" 1984; 10 pages

American Institute of Certified Planners and
American Society of Consulting Planners;
One copy free from:
American Institute of Certified Planners
1776 Massachusetts Avenue, N.W., 7th Floor
Washington, D.C. 20036

"Guidelines for Retaining Consultants to Provide Architectural and Engineering Services" 1973; 8 pages

One copy free from:
American Public Works Association
1313 East 60th Street
Chicago, Illinois 60637

"Guide for Negotiation of Engineering Services for Highways, Bridges and Related Projects" (Technical Bulletin No. 253) 1984; 44 pages

$5.00 per copy from:
American Road and Transportation Builders Association
525 School Street, S.W.
Washington, D.C. 20024

"Consulting Engineering—A Guide for Engagement of Engineering Services" (Manual #45) 1981; 96 pages

$4.00 per copy from:
American Society of Civil Engineers
345 East 47th Street
New York, New York 10017

"PAESAR: Professional Architect-Engineer Selection and Retention" 1984, 24 pages

$3.50 per copy from:
Association of Soil and Foundation Engineers
8811 Colesville Road/Suite G106
Silver Spring, Maryland 20910

"Selection by Ability" (English edition), 5 pages

One copy free from:
Federation International des Ingenieurs Conseils
P.O. Box 86
CH-1000 Lausanne 12—Chailly, Switzerland

"The Architect-Engineer Primer of Federal Government Contracting" 1983; 234 pages

$40.00 per copy from:
Federal Publications, Inc.
One LaFayette Centre
Washington, D.C. 20036

"Professional Selection of Professional Engineers" November, 1984; 8 pages

One copy free from:
National Society of Professional Engineers
1420 King Street
Alexandria, VA 22314

American Consulting Engineers Council
1015 Fifteenth Street, N.W.
Washington, D.C. 20005

American Institute of Architects
1735 New York Avenue, N.W.
Washington, D.C. 20006

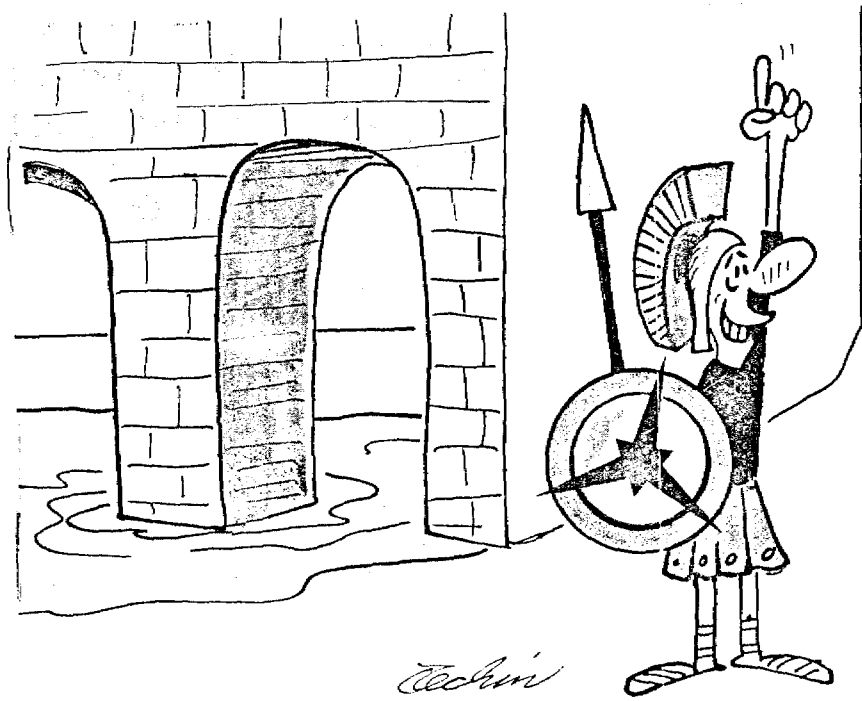
American Institute of Certified Planners
1776 Massachusetts Avenue, N.W.
Washington, D.C. 20036

American Society of Civil Engineers
345 East 47th Street
New York, N.Y. 10017

American Society of Consulting Planners
9001 Edmonston Road
Greenbelt, MD 20770

American Society of Landscape Architects
1733 Connecticut Avenue, N.W.
Washington, D.C. 20009

National Society of Professional Engineers
1420 King Street
Alexandria, VA 22314

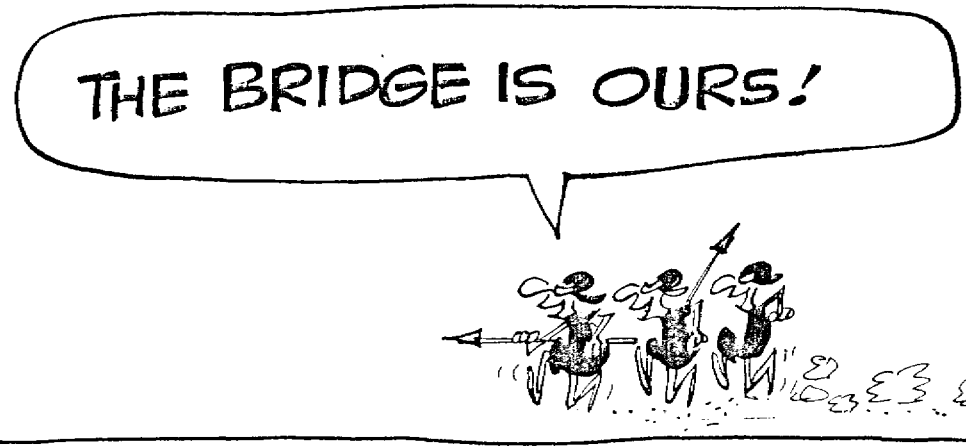


SENATE BUSINESS & INDUSTRY
EXHIBIT NO. 8
DATE 2/10/87
BILL NO. AB310

THE BRIDGE IS OURS!

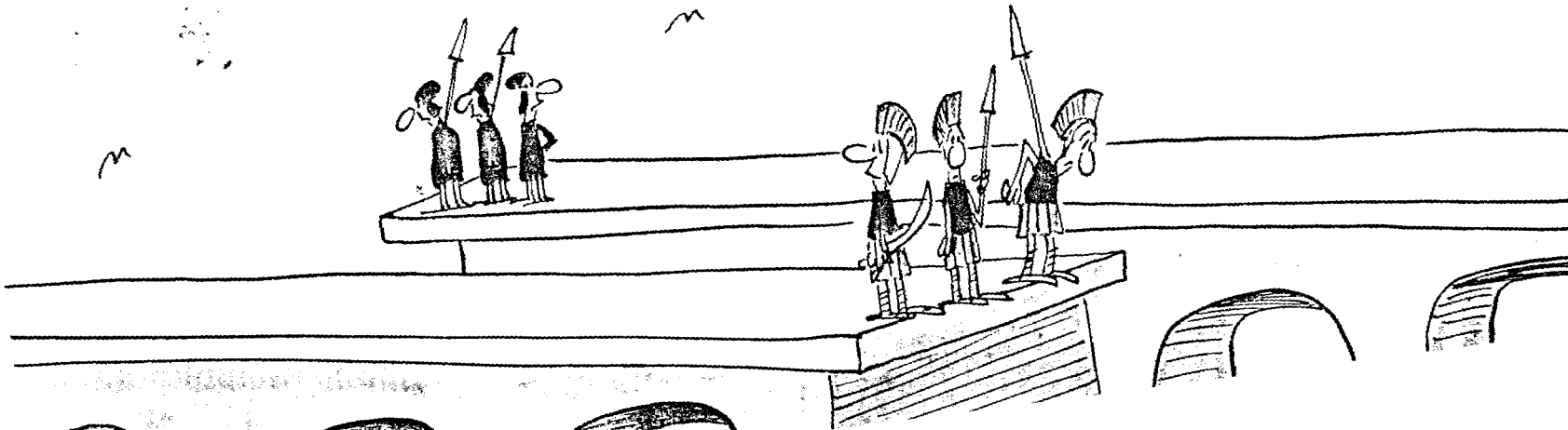
A Guide to the Procurement of Engineering Services

CHARGE!



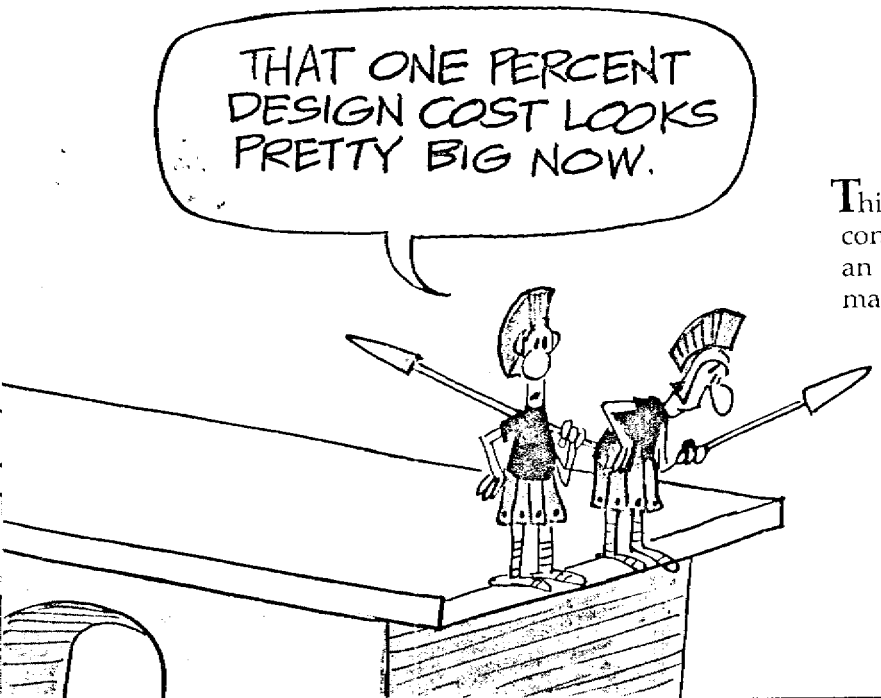
Owners, clients, plant engineers, agencies and procurement officials seeking the services of consulting engineers for the first time usually ask, "Why not obtain price quotations from a number of firms and then select the lowest bidder?" At first glance this approach to "nailing down" engineering costs upfront seems logical.

However, the procurement of specialized engineering services by the low-price method is generally ill advised.



While the cost of engineering services usually represents less than **one percent** of the total lifetime cost of designing, constructing, maintaining and operating the average facility, it is important to note that design can have a major impact on all other costs related to the project. Whether that impact represents a saving or loss for the client can be affected by the process by which a client selects and contracts with a design firm.

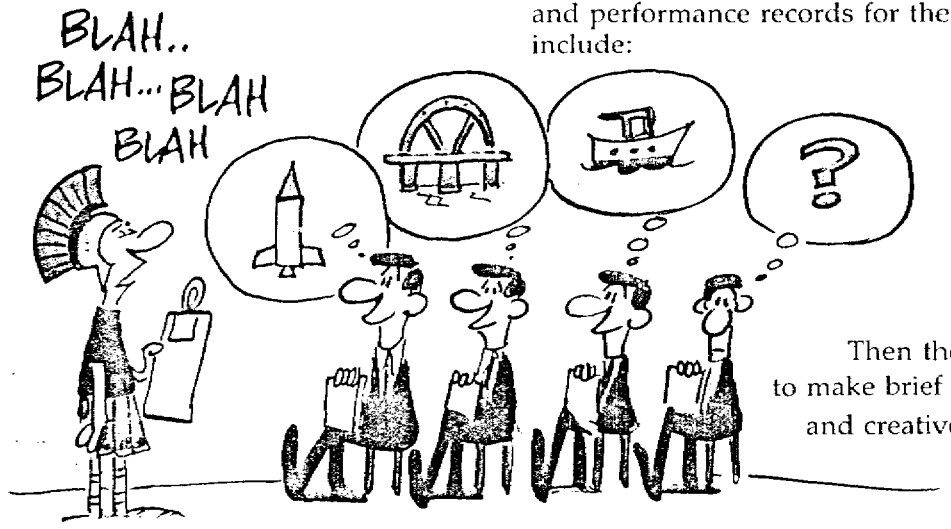
Those unfamiliar with the role of the engineering professional often ask, "We buy everything else from the lowest bidder, so why shouldn't we choose engineers by low bid too?" The answer is that engineers deal in creativity, not commodities. A contract for the purchase of computers, steel, roofing tiles or even the construction of a building can be awarded on the basis of lowest bid because the buyer can describe to the potential supplier exactly what is wanted. The buyer or his designer sets forth specifications in advance stipulating the size, quantity, color and other characteristics of the commodity desired. The supplier need only calculate the lowest price at which he can sell the item and still make a reasonable profit.



This is *not* the case when a client seeks the services of a consulting engineer. The client is invariably looking for an answer to a technical or design problem that has many possible engineering solutions.

One answer to this dilemma is called **"Competition Based on Qualifications"** and it works. Under this method professional services proposals are weighed first on competence, creativity and performance and second on negotiation of a fair and reasonable price.

When this contracting procedure is used, several engineering firms submit qualification and performance records for the client's review. Key elements to consider in this review include:

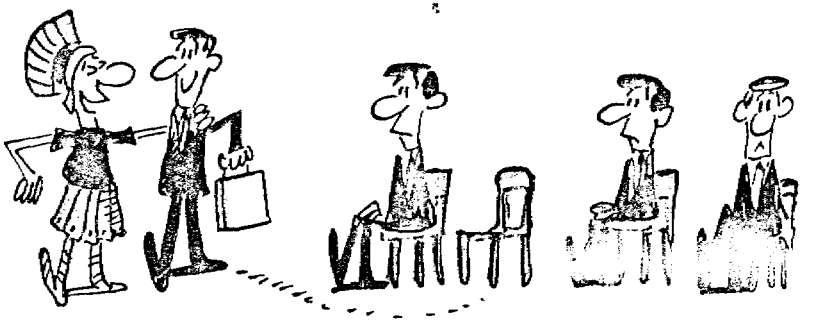


- ***Technical qualifications***
- ***Experience with similar projects***
- ***Reputation with existing clients***
- ***Timeliness, mobility and current workload***
- ***Financial references***
- ***Any factors peculiar to the project being considered***

Then the client asks the three to six most qualified firms to make brief presentations explaining alternative design concepts and creative approaches to meet the client's needs.

On the basis of these presentations, the client ranks the most qualified firms numerically in order of preference. Then he and the top-ranked firm attempt to negotiate a "scope of work," which specifies the full range of services the firm will provide, the personnel it will commit to the project and the schedule by which the work is to be completed.

When agreement is reached on the scope of work, the client and engineer proceed to negotiate a price that is fair and reasonable to both parties. If an agreement on compensation is reached, a contract is consummated. If an agreement cannot be reached, negotiations with the first firm are terminated, and the client attempts to negotiate a contract with the second-ranked firm. The process can be repeated with the third- or fourth-ranked firm if necessary.

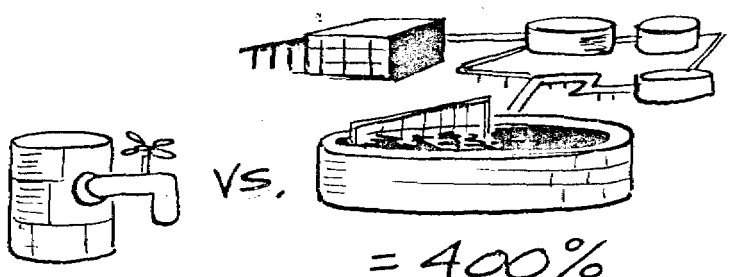


In this professional selection process, price clearly is a key factor. But it becomes a factor only *after* the most qualified consulting engineer has been identified and the client and the firm have come to an agreement on the scope of services. It is through this process of defining scope that the client comes to a clear understanding of its needs and the engineer fully appreciates the nature and level of effort expected of him.

Competitive bidding on a predetermined scope of work eliminates this desirable "give and take" and puts the client in the position of saying, "Here's what I want done by whoever will do it cheapest." In so doing, the client denies himself access to the most valuable assets the consulting engineer has to offer—creative technical knowledge and experience applied to develop functional, cost-effective design.

Further, the scope of work written solely by the client frequently contains insufficient detail to serve as a valid basis for price proposals. In fact E/A firms bidding on the same job, in the few instances where price quotations were mandated have invariably come up with differing interpretations of presumably adequate scopes of work with wide variations in cost estimates and even greater variations in loss of quality as a result.

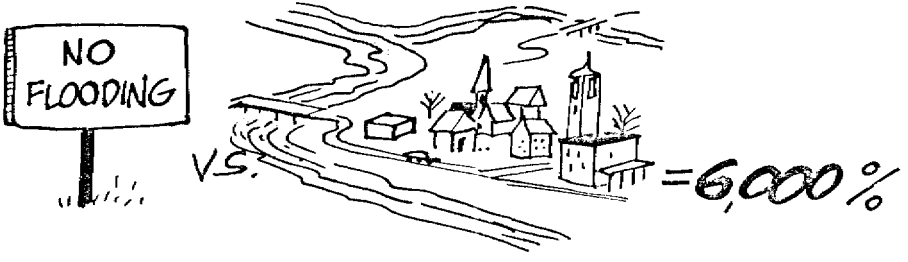
Here are some glaring, but typical examples: In April 1983, Summit County, Ohio, requested bids on design of the Greenwood Village wastewater treatment plant. Nine firms responded and the range of bids was from $20,401 to $80,694, a variance of 400 percent.



In 1982, the U.S. Coast Guard advertised for bids for 146 energy audits in the Boston area, a project the Coast Guard said it was eager to get underway. Twenty-five firms responded to the request for bids, and the range of bids was approximately $20,000 to $180,000. The contract was awarded to the low bidder in June, and in October the "winning" firm went into receivership.

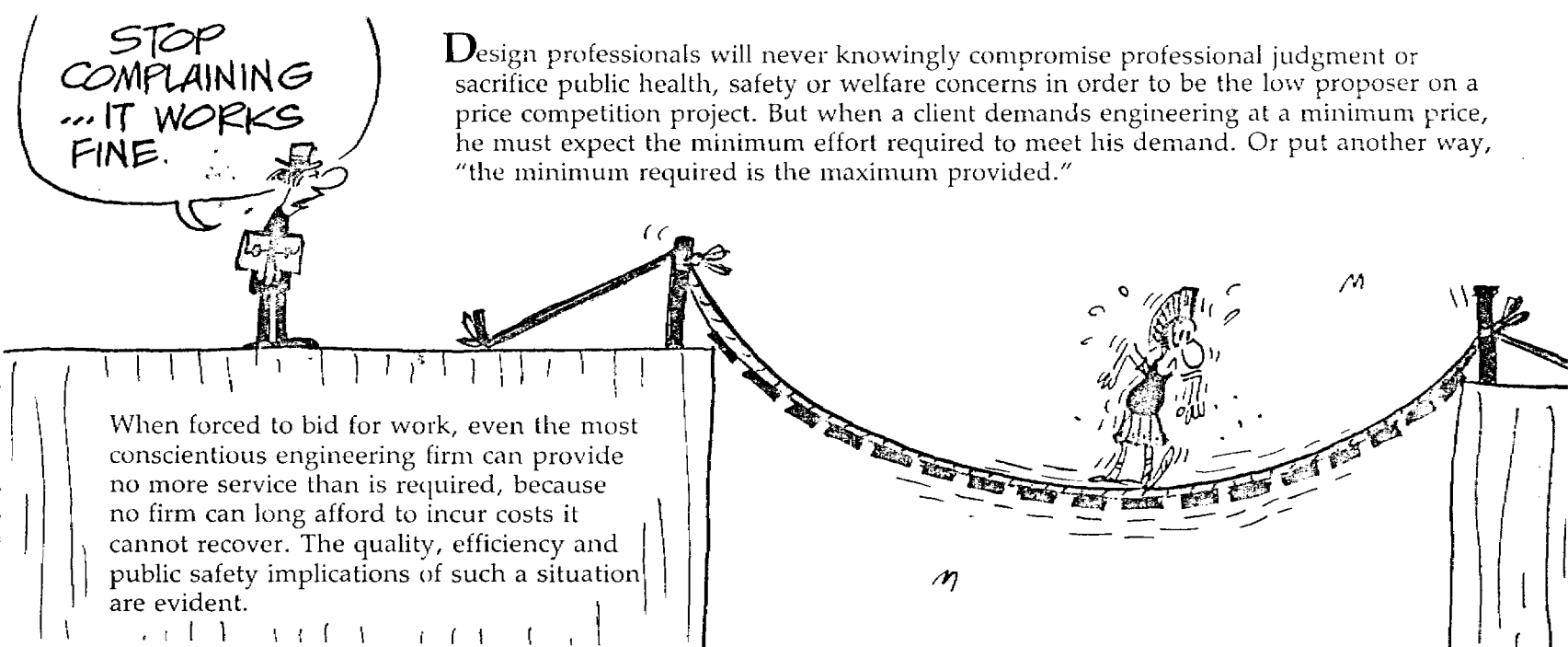
In November 1978, the State of Maryland requested bids on a complex highway design project. Four firms responded and bids ranged from $492,000 to $1,999,000, a variance of 400 percent.

In July, 1976, the Bureau of Reclamation, sought bids on an environmental assessment of the proposed Merlin Diversion of the Rogue River Basin in Oregon. Forty-seven firms responded. The range of bids was $5,070 to $301,000, a variance of 6,000 percent.



Price Competition for professional services has additional drawbacks—it frequently limits the engineer's resources to undertake a detailed analysis of the problem and to search for innovative solutions. In the short run, the client may save a few dollars on engineering costs, but in the long run such nearsightedness can carry a huge price tag, including the often hidden costs to the public health, safety and welfare.

While the owner or client may save a small amount on up-front design costs by price selecting the engineering work on his project, the result may be a significant increase in the cost of construction as well as the long-term costs of operation and maintenance. All are substantially higher than they would have been had a first-class job of design been done initially. Indeed, the operability and maintainability of the facility itself may be jeopardized.



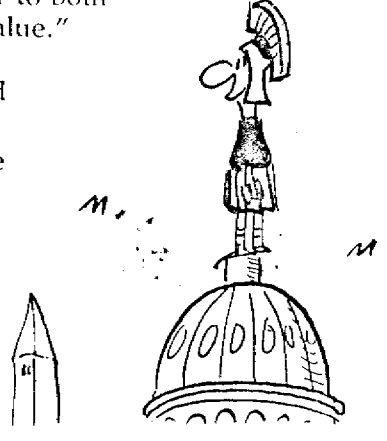
Design professionals will never knowingly compromise professional judgment or sacrifice public health, safety or welfare concerns in order to be the low proposer on a price competition project. But when a client demands engineering at a minimum price, he must expect the minimum effort required to meet his demand. Or put another way, "the minimum required is the maximum provided."

When forced to bid for work, even the most conscientious engineering firm can provide no more service than is required, because no firm can long afford to incur costs it cannot recover. The quality, efficiency and public safety implications of such a situation are evident.

Regrettably, public officeholders and project administrators all too often ask for price quotations in securing engineering work *not* because they feel it is the best policy, or because they honestly think it will save dollars. They choose this approach because it *appears* to their constituents and stockholders to be the most open, fair and economical way of hiring engineers for public projects.

And yet competition based on qualifications, which has been used in a variety of public and private settings for many years, has consistently proven that it is fully and openly competitive, fair to both client and consulting engineer, and economically effective in allowing clients to "buy for value."

In 1972 the U.S. Congress recognized the merits of competition based on qualifications and established as federal law a policy that architects and engineers should be selected on the basis of competence and unique abilities for each project and at a fair and reasonable price. This legislation, Public Law 92-582 (the Brooks Act) declares it to be the policy of the federal government to publicly announce all requirements for architectural and engineering services on the basis of demonstrated competence and qualification for the type of professional services required at a fair and reasonable price to the government. Currently over 30 states have adopted similar laws. In addition, the American Bar Association has endorsed this qualifications ranking/negotiation technique in its "Model Procurement Code for State and Local Governments."



A final word about engaging professional services. Negotiation of architectural or engineering agreements will be a fruitful and positive experience if approached with an attitude of strength, cooperation and informed compromise. Negotiation is not haggling. By the time negotiation begins with the top-ranked firm, both the client and the firm have a mutual grasp of the project's scope and the budget, which have been determined to be within reason. At the same time, the firm will have analyzed its approach to meeting the requirements of the job and the compensation necessary to do so effectively. If the compensation suggested by the firm is not in line with the client's budget, the next step is to evaluate the cause and significance of the disparity. Often a firm can suggest modified approaches which will more effectively accommodate financial constraints. But if the firm feels it is not in the client's interests to reduce the design effort, it will explain its rationale leaving to the client consideration of alternatives. In either case, frank and open dialogue is the best catalyst to prompt and mutually satisfactory agreement on terms.

Negotiations with consulting engineering firms should be conducted in an atmosphere of mutual professional trust. The largest single factor contributing to a private practice engineer's ability to remain in business and to gain new clients is his reputation. Consulting engineers are not out to make a "fast buck." They depend upon good recommendations to secure new or continuing work, just as the recommendations of their past clients lead present clients to deem them qualified to address their current needs.

In summary, clients and consulting engineers and the general public alike benefit in an environment where full and open competition in selection, based on competence and innovation, and followed by negotiation of fair and reasonable costs leads to quality design and cost-effective problem-solving.

In accordance with ACEC's Consent Decree with the U.S. Department of Justice, please be advised that nothing in the American Consulting Engineers' Professional and Ethical Conduct Guidelines prohibits ACEC members from entering design competitions, providing free services, or providing services on a contingent basis. The provisions were eliminated from the ACEC Code Of Ethics and Professional Conduct Guidelines in October 1980.

SENATE BUSINESS & INDUSTRY
EXHIBIT NO. 9
DATE 2/10/81
BILL NO. AB 310

A Brief Case for Excellence

in Procurement of Architect-Engineer and Land Surveying Services

A VIDEO PROGRAM:
ABA Model Procurement Code
For State and Local Governments

About the Program

A video format was chosen as the best means of presenting the case for excellence in A/E procurement. Through state-of-the-art video techniques, the audience is given an immediate, first-hand account of the situations encountered by public officials in the area of procurement of architect, engineer and land surveying services. The comments and opinions of these people, presented directly in interview format, tell the story of the development of the ABA Model Code, as well as present the best arguments for its adoption.

Produced in Cooperation
With The
Public Contract Law
And
Urban, State and Local Government Law
Sections of The
AMERICAN BAR ASSOCIATION

A Brief Case
for Excellence
in Procurement of
Architect-Engineer and
Land Surveying Services

Objectives

This video program outlines the provisions of the American Bar Association's Model Procurement Code for the selection of architectural, engineering, and land surveying services by state and local governments.
It demonstrates the benefits of a qualifications-based selection procedure for the procurement of these professional services.

The program gives an overall perspective on the qualifications-based procurement methods now in place in many of the states.
The benefits of selecting the best qualified design professionals are presented through interviews with experienced officials, clients, design professionals and attorneys. This video program presents a complete picture of the development and implementation of the ABA Model Procurement Code

Audience

The audience for this presentation is state and local legislators and public agency officials, as well as state and local chapters of other public and private client groups. The latter audiences include:

- Public Works professionals
- Procurement officials
- Institutional administrators

In addition, professional societies may make the program available for presentation to their local chapters and to local civic groups.

From this program, the audience will have a better understanding of the rationale behind the development of the Code, the experiences of design professionals working within the Code's selection process as well as the views of clients who apply the Code process.

Concept

Since many viewers have a background in either law, administration, architecture, engineering or land surveying, the language and thematic structure of the video program is similar to a court trial or a public hearing. This trial format is used to emphasize the case for excellence. The program includes the following elements:

- Opening statement
- Presentation of the case
- Presentation of the opposite case
- Cross examination
- Rebuttal
- Summation

A positive case for the adoption of the ABA Model Code is made strongly and definitively.

Cast of Characters

People from all parts of the United States involved in different aspects of the ABA Model Code—its drafting as well as its application—participated in this video.

- **Attorneys instrumental in the development of the ABA Model Code**
- **Design professionals who regularly submit projects to clients**
- **Public clients who use qualficiations as the basis for their selection of design professionals**

The cast of characters includes:

ARTHUR ANDERSEN, P.E.
CEO, ABKJ
Seattle, Wa.

JOHN A. BOYD, Jr., P.E.
Pres., Boyd Brown Stude & Canbern
Kansas City, Mo.

MYRON CALKINS
Director of Public Works
Kansas City, Mo.

BRENDAN DONEGAN, Architect
Office of Architectural Services
Montgomery County, Md.

JOHN DYER
General Manager
Southern California Rapid Transit District
Los Angeles, Ca.

PATRICK J. FALVEY, Esquire
Port Authority of New York and
New Jersey, New York, N.Y.

DONALD FREDERICK, Architect
Dade County Dept. of Architecture
Miami, Fl.

ORRIS S. HIESTAND, Jr., Esquire
Morgan Lewis & Bockius
(Former Chairman
Public Contract Law Section, ABA)
Washington, D.C.

DONALD HURLBERT, P.E.
City Engineer
Kansas City, Mo.

GEORGE IWAN
Contracts Officer
State Building Construction
St. Paul, Mn.

JOHN JACKSON, P.E.
Assistant Director of Public Works
Miami, Fl.

ELWIN LARSON, P.E.
City Engineer, Public Works Dept.
Omaha, Ne.

THOMAS MADDEN, Esquire
Venable Baejer Howard Civiletti
(Chairman Model Procurement
Code Comm., ABA)
Washington, D.C.

RANDALL S. MARSHALL, Architect
Navy Marshall & Gordon
(Chapter Co-chair
National Assoc. of Minority Architects)
Washington, D.C.

WILLIAM A. ORDWAY
Director, Arizona
Department of Transportation
Phoenix, Az.

WILLIAM M. POLK, Architect
John Graham Co.
(Former Speaker
Wash. State House of Representatives)
Seattle, Wa.

NORA LEA REEFE
President
Consulting Management Services, Inc.
Tampa, Fl.

DAVID C. RUF, P.E.
President, Burns & McDonnell
Kansas City, Mo.

GEORGE SATTERLY, P.E.
State District Engineer
Kansas City, Mo.

KAREN HASTIE WILLIAMS, Esquire
Crowell & Moring
(Former Administrator
Office of Federal Procurement, OMB)
Washington, D.C.

THE CASE

Opening Statement

A ten-year movement by the American Bar Association (ABA) to develop and promote the adoption of the Model Procurement Code has been quietly influencing state and local jurisdictions across the nation. The ABA Model Code is the culmination of intensive study and analysis by state and local purchasing officials, associations interested in public procurement and members of the legal profession knowledgeable in public contracting.

During the Code's Development, ABA volunteers were joined by public purchasing professionals and an advisory board comprised of 19 organizations interested in improving state and local procurement. The resulting Model Code is now offered as a statutory guideline for fundamental principles and policy guidance for managing the procurement of supplies, services, and construction for public purposes. The fact that the Model Code is based on a detailed study of public procurement—federal, state and local—and reflects the thinking and comments of literally hundreds of participants, illustrates it's importance to public officials.

"It provides the best system for public procurement that exists."

ORRIS S. HIESTAND, JR., Esquire
Morgan Lewis & Bockius
Washington, D.C.

"Our procedures produce responses from firms with a high level of excellence."

BRENDAN DONEGAN
Dept. of Facilities
Montgomery County, Md.

"Good layout and design are the biggest potential savings."

DONALD FREDERICK
Architect
Dade County, Florida

Presentation of the Case

The traditional method of hiring design firms is competitive selection based on qualifications. There are seven major elements:

- Public notice
- Submission of qualifications
- Review of submittals
- Discussions with firms as to concept and approach
- Ranking competitors
- Selection of most qualified firm
- Negotiation of compensation determined to be fair and reasonable to the client.

The scope of services provided by an A/E firm include preliminary planning, project design, services that determine aesthetics, cost of construction, life cycle and maintenance costs and ultimate usability. This process of professional selection gives the public agency the best planning and design in order to produce facilities on time and within budget. Good design and planning hold down construction costs, and future operation and maintenance costs, and fosters user satisfaction.

Presentation of the Opposite Case

Public agencies are always on the lookout for ways to protect the public dollar. Recently, some of them have turned from the competitive qualifications-based method of selecting firms to the bidding or price proposal method. These agencies claim that the price bidding method saves money.

Bidding is a process where price is the primary determining factor. The contracting agency must describe the scope in clear, concise, and absolute detail. The contractual responsibilities must be rigidly defined, because any alterations to these tasks will cost extra. It is possible that the bidding process may save money for an agency at the very beginning by driving down fees. But a firm striving to be the lowest bidder may stick to what has worked before and provide the bare minimum at the lowest price. Proponents of bidding maintain that design and engineering services are equal except for the price.

"The problem in using pricing alone, is that you get what you pay for."

RANDALL S. MARSHALL, Architect
Navy Marshall & Gorden
Washington, D.C.

Cross Examination

Q. *Which is more costly: bidding or negotiated procurement?*

A. Bidding is more expensive. A skilled technical staff must be specially hired to define precisely what is required. This adds to an agency's operational costs. Second, by narrowly defining the project to get objective price proposals, alternative and less expensive concepts may be ignored because there is no incentive to give the client more than requested.

"We believe very strongly in the integrity of the process."

JOHN DYER
General Manager
SCRTD
Los Angeles, California

Finally, the bidding process creates an adversarial relationship between the design professional and the public agency. The design professional offers the bare minimum at the lowest price. Yet the agency client seeks full service at a fair and reasonable price.

Q. *How are the long-term costs of the project affected by bidding?*

A. They are generally higher. This is true for construction and life cycle costs. Professional services costs are a very small percentage of the total construction cost.

Q. *What are the short-term problems with bidding?*

A. Frequently, there is difficulty in comparing price proposals because the scope of the work is seldom definitive. This difficulty results in added cost to an agency.

Q. *What are the life cycle costs?*

A. The professional service fee is usually about 1% of the life cycle costs of a building (generally thought to be 40 years). The construction cost is 7-10% and maintenance and operating costs are approximately 90%.

Rebuttal

At one time, professional societies argued that bidding was against the code of ethics. The problems inherent in the bidding process, however, went beyond the question of ethics. For example: the design professional is really hired to represent the client's interest in the design and construction process. The bidding process defeats a close relationship, and inhibits the professional from seeking alternative solutions to problems.

"It's an approach to solving state and local governments' problems."

KAREN HASTIE-WILLIAMS, Esquire
Crowell & Moring
Washington, D.C.

"The objective was to develop a simple way to maximize the public funds."

TOM MADDEN, Esquire
Venable Baejer Howard
Civiletti, Washington, D.C.

Summation

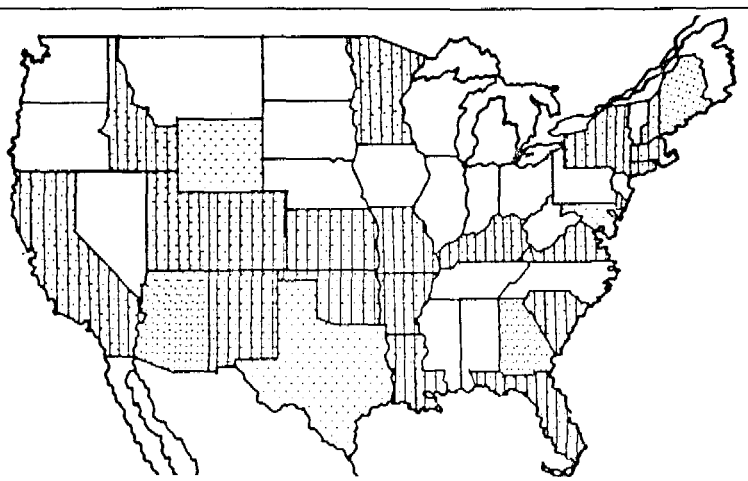
Any process set forth in the language of the ABA Model Procurement Code will generally assure a state or local government that it will get the best qualified professional at a fair and reasonable price.

The major benefits of the competitive qualifications-based selection procedure is that the design professional is seeking to maximize the interest of the state or local government in the end product.

The purpose of local government is to deliver government services to the people with a quality and excellence that is appropriate. One of the major advantages of using the Model Code is that it is a proven process, utilized on thousands of projects involving billions of dollars of public funds.

STATE PROCUREMENT LAWS

- States with Qualification-Based Selection Procedures
- Qualification-Based Procedures with Minor Modifications
- Selection Based Upon Price and/or Other Factors



ABA Model Procurement Code

(1) Applicability. Architect-engineer and land surveying services shall be procured as provided in this Section except as authorized by Section 3-204 (Small Purchases), Section 3-205 (Sole Source Procurement), and Section 3-206 (Emergency Procurements).

(2) Policy. It is the policy of this (State) to publicly announce all requirements for architect- engineer and land surveying services and to negotiate contracts for architect-engineer and land surveying services on the basis of demonstrated competence and qualification for the type of services required, and at fair and reasonable prices.

(3) Architect-Engineer Selection Committee. In the procurement of architect-engineer and land surveying services, the Chief Procurement Officer or the head of a Purchasing Agency shall encourage firms engaged in the lawful practice of their profession to submit annually a statement of qualifications and performance data. The Chief Procurement Officer or the head of a Purchasing Agency, the Procurement Officer, and (the State Architect) shall comprise the Architect-Engineer Selection Committee for each architect-engineer and land surveying services over ($). The Selection Committee for architect-engineer and land surveying services contracts under this amount shall be established in accordance with regulations promulgated by the Policy Office. The Selection Committee shall evaluate current statements of qualifications and performance data on file with the (State), together with those that may be submitted by other firms regarding the proposed contract. The Selection Committee shall conduct discussions with no less than three firms regarding the contract and the relative utility of alternative methods of approach for furnishing the required services, and then shall select therefrom, in order of preference, based upon criteria established and published by the Selection Committee, no less than three of the firms deemed to be the most highly qualified to provide the services required.

(4) Negotiation. The Procurement Officer shall negotiate a contract with the highest qualified firm for architect-engineer or land surveying services at compensation which the Procurement Officer determines in writing to be fair and reasonable to the (State). In making this decision, the Procurement Officer shall take into account the estimated value, the scope, the complexity, and the professional nature of the services to be rendered. Should the Procurement Officer be unable to negotiate a satisfactory contract with the firm considered to be the most qualified, at a price the Procurement Officer determines to be fair and reasonable to the (State), negotiations with that firm shall be formally terminated. The Procurement Officer shall then undertake negotiations with the second most qualified firm. Failing accord with the second most qualified firm, the Procurement Officer shall formally terminate negotiations. The Procurement Officer shall then undertake negotiations with the third most qualified firm. Should the Procurement Officer be unable to negotiate a contract at a fair and reasonable price with any of the selected firms, the Procurement Officer shall select additional firms in order of their competence and qualifications, and the Procurement Officer shall continue negotiations in accordance with this Section until an agreement is reached.

COMMENTARY:

(1)This Section applies to procurement of all services within the scope of architecture, professional engineering, or land surveying as defined by the laws of the state whether or not construction is involved.

(2)The principal reasons supporting this selection procedure for architect-engineer and land surveying services are the lack of a definitive scope of work for such services at the time the selection is made and the importance of selecting the best qualified firm. In general, the architect-engineer or land surveyor is engaged to represent the (State's) interests and is, therefore, in a different relationship with the (State) from that normally existing in a buyer-seller situation. For these reasons, the qualifications, competence and availability of the three most qualified architect-engineer or land surveying firms are considered initially, and the price negotiated later.

(3)It is considered more desirable to make the qualification selection first and then discuss the price because both parties need to review in detail what is involved in the work (for example, estimates of man-hours, personnel costs, and alternatives that the architect-engineer or land surveyor should consider in depth). Once parameters have been fully discussed and understood and the architect-engineer or land surveyor proposes a fee for the work, the recommended procedure requires the (State) to make its own evaluation and judgment as to the reasonableness of the fee.

(4)If the fee is fair and reasonable, award is made without consideration of proposals and fees of other competing firms. If the fee cannot be negotiated to the satisfaction of the (State), negotiations with other qualified firms are initiated. Thus price clearly is an important factor in the award of the architect-engineer or land surveying services contract under this procedure. The principal difference between the recommended procedure for architect-engineer and land surveyor selection and the procedures used in most other competitive source selections is the point at which price is considered.

(5)If an enacting jurisdiction desires to use a different selection process, then it may consider the following language:

The Procurement Officer shall negotiate with the highest qualified firms for a contract for architect-engineer or land surveying services at compensation which the Procurement Officer determines in writing to be fair and reasonable to the (State). In making such a determination, the Procurement Officer shall take into account, in the following order of importance, the professional competence of offerors, the technical merits of offers, and the price for which the services are to be rendered.

Objectives of the Code:

In an attempt to assist state and local governments in drafting A/E procurement legislation and to encourage uniformity of selection procedures nationwide, the American Bar Association's Section of Local Government Law and Section of Public Contract Law have recently drafted A MODEL PROCUREMENT CODE FOR STATE AND LOCAL GOVERNMENTS.

The stated objectives of the Model Procurement Code are:

(a) to simplify, clarify and modernize the law governing procurement by this (State);

(b) to permit the continued development of procurement policies and practices;

(c) to make as consistent as possible the procurement laws among the various jurisdictions;

(d) to provide for increased public confidence in the procedures followed in public procurement;

(e) to ensure the fair and equitable treatment of all persons who deal with the procurement system of this (State);

(f) to provide increased economy in (State) procurement activities and to maximize to the fullest extent practicable the purchasing value of public funds of the (State);

(g) to foster effective broad-based competition within the free enterprise system; and

(h) to provide safeguards for the maintenance of a procurement system of quality and integrity.

CALL FOR ACTION

For more information on the details of the ABA Model Procurement Code as presented in this video program, or to find out how you can contribute to the overall effort to get the Code adopted by your state and local officials, write to your respective professional organization.

SPONSORING ORGANIZATIONS

American Congress on Surveying and Mapping
American Consulting Engineers Council
American Institute of Architects
American Society of Civil Engineers
ARTBA Planning and Design Division
National Society of Professional Engineers

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SENATE BUSINESS & INDUSTRY
EXHIBIT NO. 10
DATE 2/10/87
BILL NO. HB 310

COMMENTS

BY THE CITY OF GREAT FALLS

ON

H.B. #310

POSITION

The City of Great Falls supports and advocates adoption of H.B. #310.

ADVANTAGES OF THE PROPOSED LEGISLATION

This bill is necessary tool for Montanans because 1) it establishes a standard, 2) provides for increased competition and 3) conforms to canons of the respective professions.

By providing this standard, a written procedure for local administrators is available that defines the process on how the local agency is to proceed in obtaining special talent to perform the necessary work. Also, it allows the local agency the necessary flexibility to define how, in what manner and sequence a particular task is accomplished.

Increased competition results from publishing the need of special services. Each provider of services knows that all practitioners in a discipline have been given notice and have the opportunity to compete for the same work. The knowledge of others also having an opportunity for consideration provides the incentive to keep abreast of current technology changes and to manage business operations in a cost effective manner.

The canons of each profession addressed by the bill embrace and endorse the procedure proposed by the bill. Therefore unanimous support from the professions can be expected.

CITY POLICY

The City of Great Falls adopted a policy parallel to the proposed bill in December, 1986, (copy attached) to provide a similar guidance to all City Departments. Too many differing procedures were being utilized in procurement of professional services and the Professional Community was critical of the multitude of procedures. A committee comprised of the major professional groups and the City developed the Policy. Subsequently the City Commission adopted the Policy for implementation.

Submitted by:

Stewart Pearson, City Engineer
January 29, 1987

ARCHITECTS/ENGINEERS SELECTION POLICY

CITY OF GREAT FALLS

DECEMBER 16, 1986

PURPOSE:

To provide for a systematic procurement of Architect/Engineer Services and insure the best qualified talent is obtained to perform services for the public.

CATEGORIES:

Projects are classified according to the criteria of either being less than or more than $10,000 compensation to the professional. Those projects with less than $10,000 professional compensation shall be considered minor projects and those projects with more than $10,000 of professional compensation shall be considered major projects.

ANNUAL FILING:

The City shall at the beginning of each year invite the filing of Standard Federal Government Form 254 from each firm wishing to be considered for major projects. All firms within the City that desire to be placed on the minor projects list should notify Technical Services of the Community Development Department of the classification for placement.

SERVICES PROCUREMENT PROCEDURE:

The Department requiring architecture and engineering services notifies the Community Development Department. Technical Services Division reviews funding and develops work description based on needs and funding. The project is classified as either a Minor or Major project and handled according to the following options.

MINOR PROJECTS

The City policy on Minor Projects is that they will be rotated among the firms that are qualified to perform the work. For purposes of classification the City initially establishes Architects, Engineers/Surveyors as the categories in which each firm can classify itself and only one listing per firm is allowed in the minor project category.

The first qualified firm will be contacted for a proposal, if agreement cannot be reached on compensation, the City will inform the first that negotiations are being discontinued and negotiations with the next qualified firm will begin. The process will continue until an agreement is reached. Firms awarded work will have their listing moved to the bottom of the list and those whose negotiations are discontinued will remain in their present position on the list.

MAJOR PROJECTS

The City Pre-Selection Committee will advertise for Federal Government Standard Form 254/255* and/or a Statement of Interest, as determined necessary, to initially identify all firms to be considered for the project.

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Background Rating

Evaluation of services offered will be a two part process comprised of a Background and Interview Rating. The Background and Interview Ratings will each contain 50% of the total points of the ranking. The Background element of the ranking will contain, in addition to the Project Needs Criteria, elements for Local Business (LB), Previous Work (PW), and Project Familiarity (PF). The Pre-Selection Committee established the point assignments for the Project Needs Criteria and the LB, PW, and PF. LB can range between zero and fifteen (0 and 15) points whereas PW and PF can range between zero and ten (0 and 10) points. Interested consultants will be issued the Background Rating Criteria and point assignments prior to submittal of the 254/255* forms.

From three (3) to seven (7) firms who will be selected for interview by the Pre-Selection Committee.

Interview Rating

Prior to the interview an outline program, scope of services and proposed budget figure would be provided to the interviewee's along with the evaluation criteria and the points for each of the criteria. Notice will also be given of all interviewee's to all firms to be interviewed.

Proposals

Total scores will be compiled from the background and interview rating to determine the firm ranking. The Department Director will review the ranking and establish a date for a final proposal. Technical Services will negotiate the final proposal and submit the proposal to the Director on the requested date. If a satisfactory proposal cannot be obtained from the top ranked firm, the second ranked firm will be contacted for a proposal.

Adopted: December 16, 1986

* 255 will contain ten (10) years of historical projects instead of five (5) years.

SENATE BUSINESS & INDUSTRY
EXHIBIT NO. 10
DATE 2-10-87
BILL NO H.B. 310

NAME: Phil Parini DATE: 2/10/87

SENATE BUSINESS & INDUSTRY
EXHIBIT NO 11
DATE 2/10/87
BILL NO HB 310

ADDRESS: P.O. Box 6147

PHONE: 442-8553 / 3050 Office

REPRESENTING WHOM? American Society of Civil Engineers

APPEARING ON WHICH PROPOSAL: HB 310

DO YOU: SUPPORT? ✓ AMEND? _____ OPPOSE? _____

COMMENTS:

Prepared Testimony Attached

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

SENATE BUSINESS & INDUSTRY
EXHIBIT NO. 11
DATE 2/10/87
BILL NO. HB 310

TESTIMONY HB-310

BUSINESS AND INDUSTRY COMMITTEE

MONTANA SENATE

FEBRUARY 10, 1987
10:00 AM

INTRODUCTION by Phil Porrini, President of the Montana Section of the American Society of Civil Engineers.

The Montana Section of the American Society of Civil Engineers (ASCE) supports House Bill 310.

Our technical society is comprised of:
over 400 members,

of which 35 percent are from the public sector (Federal, State and Local governments),

55 percent are from the private sector (Private industry and consultants),

and the remaining 10 percent are retired civil engineers and student members.

ASCE strongly endorses the concept of qualifications based selection of architectural, engineering, land surveying and ~~landscape architectural~~ services.

Thank you for your consideration of this legislation.

testimony.310

SENATE BUSINESS & INDUSTRY
EXHIBIT NO. 11
DATE 2-10-87
BILL NO. H.B. 310

SENATE BUSINESS & INDUSTRY
EXHIBIT NO. 12
DATE 2/10/87
BILL NO. HB 310

CAMPEAU CRENNEN & KARHU ARCHITECTS & PLANNERS

February 10, 1987

HB310 ESTABLISH PUBLIC POLICY FOR A/E SELECTION

Architects who are contracting with the State of Montana are working under a selection procedure that parallels the method described in HB310. We regard this procedure as fair and equitable and the best method of assuring contracting agencies that they are retaining competent professionals because it is based on performance, experience and professional qualifications.

I urge your favorable consideration of this bill.

I represent the Montana Chapter of the American Institute of Architects and am a practicing architect in Helena, Montana.

Martin W. Crennen, AIA
#1 N. Last Chance Gulch
Helena, Montana 59601

Sen. Walker asked if it would be appropriate to get Mr. Nielsen to talk to the committee and answer some of the questions. He said maybe they could circumvent having this contracted out by going to this method and maybe this could be addressed within the bill also and save some money at the same time. That would certainly be worth their efforts, he thought.

Sen. Boylan said he liked the idea of contracting these things out as much as possible as it saves money in the long run - no benefits have to be paid that go along with FTE's. Sen. Walker said there is a lot of money to be saved with $80,000 per month vs. four FTE's even paying benefits.

Sen. Weeding said he thought the four FTE's were to rectify errors that occur after Consultec runs the verification. Chairman Kolstad said he thought one FTE could handle most of that work.

Chairman Kolstad said Mr. Nielsen could be invited back to speak to the committee at a future date. He asked if the committee would be more comfortable with that. The secretary was then instructed to contact Mr. Nielsen and ask him to come back on February 12, 1987 and also Sen. Halligan should be contacted to be present.

DISPOSITION OF HOUSE BILL NO. 310: Sen. Thayer MOVED HB 310 BE CONCURRED IN, seconded by Sen. Weeding. Discussion on the motion being called for, Sen. Thayer wondered if they should look at 5 or 10 and worried that 10,000 would hurt the land surveyor, however, this bill would put them all in the same condition and should be a good bill. The question being called, the MOTION CARRIED UNANIMOUSLY. Sen. Mazurek will carry the bill.

DISPOSITION OF SENATE BILL NO. 257: Sen. Walker MOVED THE STATEMENT OF INTENT BE ADOPTED, seconded by Sen. McLane. There being no discussion, the MOTION PASSED ON UNANIMOUS VOTE. Sen. Walker MOVED ADOPTION OF AMENDMENT #7, seconded by Sen. McLane. Discussion of the amendment showed that it was unnecessary language. The vote was called and the MOTION PASSED UNANIMOUSLY. Sen. Walker then MOVED SB 257 DO PASS, AS AMENDED WITH THE STATEMENT OF INTENT ATTACHED. The MOTION CARRIED UNANIMOUSLY.

DISPOSITION OF SENATE BILL NO. 163: Chairman Kolstad announced that Sen. Neuman was absent at that time but would have the opportunity to vote. (Sen. Neuman later voted "no".) Sen. Boylan MOVED SB 163 DO PASS, seconded by Sen. Meyer. Following discussion of the fair hearing and the economy of the state, both with farmers and with banks, the question was called. A Roll Call Vote was taken; following a tie vote, Sen. Walker changed his vote to "yes" in order to get it on the floor. (Roll Call Vote attached)

ROLL CALL

Business & Industry COMMITTEE

50th LEGISLATIVE SESSION -- 1987

Date 2/11/87 Wednesday

NAME	PRESENT	ABSENT	EXCUSED
ALLEN C. KOLSTAD, CHAIRMAN	✓		
TED NEUMAN, VICE CHAIRMAN	✓		
PAUL BOYLAN	✓		
TOM HAGER	✓		
HARRY H. McLANE	✓		
DARRYL MEYER	✓		
GENE THAYER	✓		
MIKE WALKER	✓		
CECIL WEEDING	✓		
BOB WILLIAMS	✓		

Each day attach to minutes.

STANDING COMMITTEE REPORT

FEBRUARY 11, 19 87

MR. PRESIDENT

We, your committee on BUSINESS & INDUSTRY

having had under consideration HOUSE BILL No. 310

Third reading copy (Blue color)

KITSELMAN (MAZUREK)

ESTABLISH POLICY FOR APPLICANTS PROVIDING ARCHIT/ENG/LAND SURVEYING SERVICES

Respectfully report as follows: That HOUSE BILL No. 310

BE CONCURRED IN

~~DO PASS~~

~~DO NOT PASS~~

ALLEN C. KOLSTAD,
Chairman.